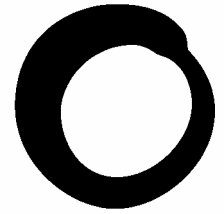


November 2004



**Friends of
the Earth**

Putting justice at the heart of the Planning System in Northern Ireland

**Response to the consultation: Reforming Planning Proposals to
Amend Primary Legislation in Northern Ireland, August 2004**

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

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- the most extensive environmental network in the world, with over 60 national organisations across five continents**
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- dependent upon individuals for over 90 per cent of its income.**

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Introduction

The planning system could be one of the most effective, sophisticated and potentially radical instruments for environmental regulation in Northern Ireland. The future of the planning system, and public involvement in it, determines how we control and regulate the market for land, demonstrate democratic accountability and achieve sustainable development. A new Planning Bill provides a vital legislative opportunity to create a fair and transparent planning system with a clear set of objectives focused on the achievement of sustainable development. The introduction of robust rights of participation along with a statutory duty to promote sustainable development would position the Northern Ireland system as one of the most progressive and just in Europe.

Friends of the Earth Northern Ireland supports a range of voluntary local groups who regularly engage with the planning system at a local and national level. We also actively work with and build alliances with other community-based organisations to shape a planning system that is fair, transparent, democratically accountable and delivers high quality sustainable development.

Reforming Planning in Northern Ireland

Friends of the Earth Northern Ireland strongly supports the need for legislative change to the planning system and welcomes the consultation on the detailed provisions of the new Planning Bill. Major reform should be a key priority in order to make the system fit for purpose to achieve efficient and inclusive planning decisions which deliver sustainable development for Northern Ireland. Such reform must deal with the growing public concern over planning decisions reflected in an increased number of objections to development plans and in the failure of the system to adequately regulate development that has significant environmental impacts (e.g. the concentration of development in open countryside).

We support legislative change in many of the areas identified in the paper and particularly support action on enforcement and the control of mezzanine floors in retail developments. We specifically endorse the suggested threshold space standards for the control of such developments. We look forward to commenting on the detailed legislative provisions when they become available.

However, we are concerned that the reform package is not based on a strategic consideration of needs of the Northern Irish system but instead on a piecemeal response to particular deficiencies. It appears to us that this is a lost opportunity to consider and implement many of the innovative and constructive lessons from the NIPC¹, the experience of planning reform in England and Wales, the contents of the RCEP 23rd report² and the spirit and letter of European and international developments

1 Northern Ireland Planning Commission, 2004

2 Royal Commission on Environmental Pollution 23rd report, 2002

including the Aarhus Convention³. We hope the department will begin a dialogue with those who wish develop the remit of new legislation and would welcome the opportunity to provide further detailed submissions. In the interim we are concerned over four specific areas of the consultation paper:

- The suggested removal of the right to be heard at local plan inquiries.
- The ruling out of a third party right of appeal.
- The proposal not to implement a statutory purpose for the planning system.
- The fact that there is no requirement for a Statement of Community Involvement which is a legal requirement⁴ for England and Wales.

We are disappointed that the overall package of legislative changes does not deliver enhanced public participation in order to create greater community ownership of the planning process. There is a broad consensus amongst many organisations about the need to rebuild public confidence in the planning system. It is hard to see how this will be achieved if the Department of the Environment proceeds with a Bill that fails to address public legitimacy. Despite a good deal of rhetoric and a public commitment to increased participation⁵ and the strong recommendations of the NIPC⁶ the planning reform package contains not one single new statutory opportunity for public participation. Third party rights have been dismissed and a right to be heard removed. At a time when planning should be seeking to be more legitimate in the eyes of the public, these measures are counter productive. Overall the proposals illustrate the Department of the Environment's over concentration on 'speed' rather than quality and its consequent failure to grasp the importance of rights and participation in the planning process.

1. Removing the Right to be Heard

Overview

The right to be heard by anyone who has made a formal objection to a local plan is one of the key foundational safeguards of the UK planning system. It has particular significance in Northern Ireland because of the lack of local democratic accountability in planning decisions. It is the only right which guarantees direct access to the decision making arena on vital and detailed land use issues.

Paragraph 4.9 of the consultation paper⁷ proposes directly that there should be no right to be heard at Local Area Plan inquiries (***The department proposes that it would not include a right to be heard***). Instead plans would be examined through an

3 The Aarhus Convention: the United Nations Economic Council for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters adopted in 1998 in the Danish city of Aarhus.

4 Planning and Compulsory Purchase Act 2004, S.18 & S.63 (2).

5 Modernising Planning Processes: Implementation Plan, the Planning Service, Department of the Environment, Feb 2003

6 Northern Ireland Planning Commission, 2004

7 Reforming Planning: Proposals to amend primary legislation in Northern Ireland: Public Consultation Paper, Department of the Environment, August 2004

Examination in Public (EIP). EIP's are an invitation-only model which has in the past been applied to structure planning and, as a result of the new Planning and Compulsory Act 2004, to Regional Planning Guidance (RPG/RSS) in England. It has never been applied to local plans which identify specific land allocations precisely because this allocation impacts on individual property and human rights. It is important to note that the Planning Green Papers in England and Wales also proposed that the right to be heard at local plan inquiries be withdrawn. This proposal was dropped in recognition that it was both unfair and unworkable. As a result the PCP Act 2004 contains an explicit section⁹ defining a right to be heard in the preparation of Local Development Plans.

The withdrawal of a right to be heard would create a second class planning system in Northern Ireland where all meaningful rights based participation would be sacrificed in an attempt to speed up and streamline the system for one section of the community while ignoring the needs and well being of all others. We believe there are three principle objections to the withdrawal of the right to be heard.

1. The right to be heard and the Human Rights Act

The proposal to withdraw the right to be heard in local plan making touches on important and unresolved human rights issues in the planning context and raises the real possibility of successful challenges to the scheme on Article. 6 (fair hearing) grounds. The case law in this area is developing very rapidly see cases of Adlard¹⁰, Bloor¹¹, Bovis¹², Friends Provident¹³, Kathko¹⁴ and BT v. Gloucester¹⁵. However, numerous issues remain unresolved. Although the law is not settled it is already possible to discern some strands of accepted jurisprudence that make the approach being canvassed in this consultation a very risky enterprise. Those include:

1. Local plan-making can engage civil rights¹⁶ in certain circumstances;
2. In such cases the plan-making processes must be Art. 6 compliant;
3. The precise cases in which the plan-making process will engage civil-rights has not been determined and may vary depending on a number of circumstances;
4. In cases where Art. 6 rights are engaged the courts will have particular regard to the question of whether third parties were given a formal right to be heard by way of oral hearing and an opportunity to cross examine. Those features have been held to be particularly important in findings that aspects of the plan-making

8 The Planning Green Paper England and Wales, 2002

9 Planning and Compulsory Purchase Act, 2004 S. 20 (6)

10 R (on the application of Adlard & Others) v. Sec of State for Env, Trans & Regions, Fulham Stadium Ltd, London Borough of Hammersmith and Fulham, 2002 EWHC liv 735

11 JS Bloor Ltd v. Swindon Borough council & Others, 2001 EWHC Admin 966

12 Bovis Homes Ltd v. New Forest D C, 2002 EWHC 483

13 Friends Provident Life & Pensions Ltd v. Sec of State for Trans, Local Gov and the Regions, 2001, EWHC Admin 820, 2002 1 W.L.R. 1450

14 R (on the application of Kathko & Others) v. Rhondda Cynor Taff County Borough Council, 2001, EWHC Admin 527

15 British Telecommunications Plc v. Gloucester City Council, 2001, EWHC Admin 1001

16 Bovis Homes Ltd v. New Forest D C, 2002 EWHC 483, 2002 WL 347039, para. 316

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system are compliant¹⁷ *“The inquiry process itself allows for evidence, cross-examination and oral and written representations...The exercise by the local authority of a discretionary power to hold a further inquiry is an important part of the process.”*

We do not believe, therefore, that that the mechanism of an Examination in Public at which an individual's appearance is at the discretion of the examiner and there are no rights of cross examination, provides for these important safe guards.

In certain cases and for certain people the plan-making processes will engage Art. 6(1) rights and it will be necessary for the Local Authority to ensure that their processes do comply with Art. 6(1) without which they will be at serious risk of successful judicial review challenge. The uncertainty created by the absence of a clear right for objectors to be heard, combined with the delay which may be created by Human Rights Act 1998 challenges resulting from such uncertainty, risks undermining the effective functioning of the system. In addition, since in practice it is hard to see how someone who has made a formal objection in writing can be reasonably refused access to an EIP then there is little or no point seeking to deny that right in general. There would for example be little saving in time or administrative costs.

In addition to these important legal questions arising from the Human Rights Act we are deeply concerned that the removal of the right to be heard flies in the face of the spirit of the Aarhus convention and the direct recommendations of the RCEP 23rd report.

2. Fairness and natural justice

Rights to be heard are a long standing civil right in the planning process, allowing objectors the opportunity to speak directly to those examining the plan. This right conveys other important subsidiary rights to the individual such as the opportunity to cross-examine witnesses. It is also very important for those non experts to be able to make their case in person and orally rather than simply through written statements. All of these rights provide important safe guards which taken together add to the quality and openness of governance in Northern Ireland. The removal of such important rights purely on economic grounds (rather than on issues of national security) is unprecedented and unwarranted.

3. The loss of transparency

The withdrawal of the universal right to be heard sends entirely the wrong message to communities and reinforces the widespread public perception that planning is closed and unresponsive to their needs. The withdrawal of the right to be heard is particularly unreasonable given the lack of any clear evidence that individual objectors create undue delay in the development plan preparation process. Such inquiries are currently

¹⁷ Bovis Homes Ltd v. New Forest D C, 2002 EWHC 483, 2002 WL 347039, para. 329

dominated by private sector property objections and the reform of planning should make a much greater effort to include wider community representatives.

As a result of these concerns Friends of the Earth Northern Ireland believes any new legislation for Northern Ireland should include a direct provision for a right to be heard:

Recommended Clause on the Right to be heard

Based on clause 20 (6) of the Planning and Compulsory Purchase Act 2004

‘Any person who makes representations seeking to change a draft plan must (if (s)he so requests) be given the opportunity to appear before and be heard by the person carrying out the examination.’

2. A Third Party Right of Appeal

Friends of the Earth Northern Ireland strongly objects to the Department of the Environment’s decision to rule out a qualified third party right of appeal. This decision is based on perceived administrative and economic cost and lack of ‘*tangible*’ benefits. The fact that speed is identified as the key priority for the Northern Ireland planning system (‘...***the immediate priority is to speed up the planning decision making process in Northern Ireland***’ Paragraph 2.58¹⁸) rather than quality or inclusiveness is misguided. The decision to rule out the introduction of such a right extends to refusing to progress, in any way, the debate or even further research on the issue of third party rights of appeal.

The conclusions of the Regulatory Impact Assessment (RIA) of Third Party Rights of Appeal¹⁹ do not justify this position. The report makes clear that the costs are in fact ‘*a best guess*’ (Para 4.41) and should be used as the basis for further consideration. The calculations are not robust enough to rule out the consideration of third party rights of appeal. Indeed the report acknowledges the basic difficulty in applying crude cost benefit analysis to a problem involving concepts such as civil rights for which it will never be possible to place a beneficial monetary value (Paragraphs 4.37- 4.40). The benefits of third party rights of appeal relate to issues of legitimacy, civil rights and good governance. Ruling out third party rights of appeal on the basis of cost is as illogical as ruling out democracy for its administrative cost to the tax payer. The Department of the Environment’s position on third party rights of appeal reflects its profound disengagement from the reality of planning in Northern Ireland. It is not increased speed but public confidence which is the key driver for change.

Since the Regulatory Impact Assessment recognises the difficulty of reaching any firm conclusions it is strange that the DoE has chosen to use its findings to restrict debate so emphatically. We believe this is unfair and unreasonable and a misrepresentation of the reports findings. It may be that the DoE wishes to restrict debate for political reasons but it should not pretend that there is any clear evidential basis to this judgment. At the very least the Department of the Environment should continue to have dialogue with interested organisations to explore how third party rights of appeal or other forms of

¹⁸ Reforming Planning: Proposals to amend primary legislation in Northern Ireland: Public Consultation Paper, Department of the Environment, August 2004, para 2.58

¹⁹ Regulatory Impact Assessment of Third Party rights of Appeal, DTZ Piedad Consulting, Belfast, Planning Service, June 2004

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redress might be implemented. This is even more important because we are aware that, contrary to the conclusions of the RIA, important stake holders were not consulted during its preparation.

We would remind the DoE of the long standing political support for third party rights including a pledge, after extensive lobbying from MLA's, from the then Minister of Environment (September 2002) that there would be a full consultation on third party rights within three months. The department will be aware of long standing support for third party rights from organisations including the RCEP, the Northern Ireland Planning Commission, RSPB, WWF, ROOM, the Town and Country Planning Association and the Environmental Law Foundation.

Research commissioned by a range of community and environmental groups, including Friends of the Earth, in 2001²⁰ makes a compelling case for the introduction of third party rights of appeal. This case is based principally on the need to create a planning system which enshrines justice and equity for all participants. It has been suggested that the introduction of such a right would be too administratively complex. While new procedures would be required, Friends of the Earth Northern Ireland believes that these can be accommodated through secondary legislation and should not be allowed to detract from the creation of a just and fair planning system through establishing the principle of third party rights.

Two Approaches to Third Party Rights

There is wide acknowledgement that it would be impossible to create a third party right of appeal without a mechanism for filtering out vexatious and frivolous appeals. There are two principal ways of achieving this filter mechanism. The first is set out in the joint research report, Third Party Rights of Appeal in Planning²¹. The recommendations in this report seek to limit the right of appeal only to those large-scale applications that require Environmental Impact Assessment (EIA) or applications which depart from a development plan or involve significant conflicts of interest. The drawback with this approach is that it creates no rights in relation to those large numbers of small and medium-sized developments which none the less have a very considerable impact on local communities.

The second model, which Friends of the Earth Northern Ireland has adopted, is to allow a more general right of appeal as exists in the Republic. This general right is qualified by the power of the Planning Appeals Commission to refuse to hear what they regard as vexatious or frivolous appeals. In short those who make an appeal must be able to show that they have an arguable case which relates to material planning issues. In our view this approach is easier for the public to understand while at the same time limits the opportunities for those who wish to appeal purely for personal or commercial gain. Annex 1 contains an illustration of kinds of specific legislative measures necessary to implement this approach based upon Friends of the Earth Northern Ireland's suggested amendments to the Planning Amendment Bill 2002.

Friends of the Earth Northern Ireland believes that the proposed Planning Bill is an excellent opportunity to move beyond minor procedural changes to encompass justice

²⁰ 'Third Party Rights of Appeal in Planning' by Green Balance, Leigh day & Co Solicitors, John Popham & Professor Michael Purdue, Jan 2002.

²¹ Third Party Rights of Appeal in Planning ,FOE et al, 2001

and sustainable development at the heart of our planning system. In our view the case for third party rights is overwhelming and the introduction will enable the planning system to anticipate the implementation of the Aarhus Convention and subsequent European directives.

3. Statutory Requirement for a Statement of Community Involvement

Section 18 of the PCP Act 2004 requires that Local Planning Authorities in England prepare a Statement of Community Involvement (there is related provision for Wales S. 63 (2)). SCI is one of the key expressions of a right to participate in local plan making and the development control process. The Act makes it clear that the Local Planning Authority (LPA) must 'comply with' the contents of an SCI in preparation of Local Development Plans. SCI is open to independent examination and applies to development plan and development control decisions.

There is a complete absence of any discussion of equivalent provisions in the Northern Ireland context. This is a missed opportunity to bring certainty and inclusiveness to the system by clearly setting out and properly testing standards for community participation. The SCI should set out how effective public participation is being met on a continuing basis. The SCI should be clear, concise, compulsory and comprehensive. The SCI should enable an independent examiner or auditor to check, simply, whether the planning service has complied with its SCI and allowed every opportunity for local communities to be effectively involved in the local decisions that affect them. While we recognise that the absence of local authority control means that it may be more appropriate to have a single set of standards throughout Northern Ireland, it is still vital that such standards are a statutory requirement and that failure to comply with them would compromise the 'soundness' of the plan.

4. A Statutory Purpose for Planning

The new Planning Bill for Northern Ireland should contain a clear statement of the purpose of the planning system through a statutory duty to promote sustainable development. There is general consensus that a duty to promote sustainable development provides an opportunity to reinvigorate the planning system. The Royal Commission on Environmental Pollution (2002) strongly supported this view and there is widespread consensus amongst NGO's about the merits of such a duty. We strongly reject the proposal in the consultation paper that the meaning and importance of sustainable development should continue to be contained in guidance and not enshrined in a statutory duty. The consultation suggests that both Planning Policy Statement 1²² (PPS 1) and the Regional Development Strategy provide clear guidance on sustainable development and that subordinate plans must take into account these provisions. This route does not create a forceful legal duty which places clear obligations on decision makers. On the contrary, plans must only take guidance into 'account' and this guidance can be set aside when specific circumstances demand it and where this is done reasonably. The DoE's suggested route would leave Northern Ireland in a similar position to England and Wales before the PCP Act, 2004. The advantages of such a duty in England and Wales received considerable debate and there were seen to be three principle benefits:

²² Planning Policy Statement 1: Creating Sustainable Communities

1. The power of a duty

The PCP Act, 2004 creates a duty on decision makers to act '**with the objective of contributing to the achievement of sustainable development**' S. 39 (2). This provides greater clarity that the prime consideration of the decision maker must be to consider their decision in relation to how far it contributes to this objective. Rather simply, one of many considerations to be taken into account, the duty makes sustainable development the first amongst equals.

2. The enhanced status of guidance

The key difference between the recommendations of the consultation document and provision of section 39 of the PCP Act 2004 is that the PCP Act provides a statutory duty which ensures that decision makers must have '*regard to*' the definition of sustainable development set out in guidance (draft PPS1). (The word '*regard*' has been tested by law and is stronger than simply '*consider*'.) The effect of the duty is to give the definition of sustainable development in guidance a special status so that a decision maker must first act to deliver the objective of sustainable development and must then be bound by guidance as to how sustainable development is to be interpreted. This is quite different from the much weaker requirement simply to consider national policy which has no statutory linkage. In short the duty makes guidance more meaningful for decision makers and the public.

3. Changing the culture of planning

The creation of certainty and clarity as to the objective of planning and the status of guidance has a positive impact on changing the culture of the planning service, reinforcing its role as a vital mechanism for delivering sustainable development and its contribution to inclusive governance.

Culture change in planning needs a clear, well understood and simple purpose, reinvigorating planning and reinforcing its importance in delivering sustainable development.

Friends of the Earth Northern Ireland is convinced that Northern Ireland should at least adopt the duty applying to England and Wales as a **bare minimum**. However, we strongly urge the Planning Service to consider addressing the acknowledged weakness of the PCP Act 2004. These weaknesses are both procedural and substantive.

Procedural

While the PCP Act 2004 contains a vague commitment²³ that the planning system should "contribute" to sustainable development, this applies only to the preparation of plans and policies and not the actual decision making process. This is both confusing and a missed opportunity to provide a more positive purpose for planning. We also believe the status of guidance should be strengthened further so that decision makers 'act under and follow guidance' as to the detailed definition of what is sustainable. As a result we recommend the following draft clause on a Statutory Duty:

(1) This section applies to any person or body which exercises any function in relation to a Regional Development Strategy or Local Development Plan.

²³ Planning and Compulsory Purchase Act, 2004, S. 39

(2) The person or body must exercise the function with the objective of achieving sustainable development

(3) For the purposes of subsection (2), the person or body must act under and follow guidance, including as to the meaning of sustainable development, issued by-

Substantive

The PCP Act 2004 creates a complex structure by seeking to define sustainable development in guidance rather than on the face of the legislation. This decision was made for legal and political reasons and Friends of the Earth commissioned detailed legal advice which suggested that a definition in primary legislation was perfectly feasible and would bring greater clarity to the planning process. We continue to believe that while the PCP Act 2004 is a step forward it would be far more transparent and effective to develop a clear definition of sustainable development in primary legislation which enshrines important principles of social justice, resource conservation, inter-generational equity, open participation and democratic accountability.

We offer the following suggested form of words:

A Statutory Duty for the Northern Ireland Planning System

“It shall be the principle aim of the land use planning system to ensure sustainable patterns of development which improve the quality of life of all people while respecting environmental limits and the ability of future generations to enjoy a similar quality of life. In order to uphold this principle aim all land use decisions must enshrine the objectives of:

- **social justice**
- **inter-generational equity**
- **environmental protection**
- **resource conservation**
- **the precautionary principle**

These objectives must be secured through democratic, transparent and fair processes. The duty to promote sustainable development will be expressed through all policy and through all tiers of the planning process.”

Conclusions

The planning system cannot survive an ill-considered reform package which fails to deal with the central issues of fairness and equity. The planning system must have simplicity

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of structure and clarity of purpose reflected in comprehensive policy.

Friends of the Earth Northern Ireland is committed to a new planning system which works for everyone. The system began as a progressive social movement and remains the most influential system of environmental regulation in the United Kingdom. We believe that with reform, land-use planning has the potential to deliver progressive social policy agendas of inclusion, community empowerment and democratic renewal and deliver our vision of sustainable development.

Annex 1

Suggested legislative provisions for the introduction of third party rights in Northern Ireland.

While the new bill could deal directly with the provisions of third party rights through a new clause the following extract from Friends of the Earth Northern Ireland attempt to amend the Planning Amendment Bill 2002 gives an illustration of the kinds of legislative provisions we envisage. The suggested clause would have had the effect of amending Article 32 (Appeals) of the principal order (SI 1991 No. 1220 (NI 11)). Draft amended text is illustrated in bold italics:

Statutory Instrument 1991 No. 1220 (N.I. 11)

The Planning (Northern Ireland) Order 1991 - *continued*

- - *continued*

Special procedure for major planning applications

31.—

(2) For the purpose of considering representations made in respect of an application to which this Article applies, the Department may cause a public local inquiry to be held by the planning appeals commission.

(3) Where a public local inquiry is not held under paragraph (2), the Department shall, before determining the application, serve a notice on ~~the applicant~~ ***certain persons as specified in subsection (3)a*** indicating the decision which it proposes to make on the application; and if within such period as may be specified in that behalf in the notice (not being less than 28 days from the date of service thereof) ~~the applicant~~ ***any such person*** so requests in writing, the Department shall afford to him an opportunity of appearing before and being heard by the planning appeals commission.

(a) Persons referred to in paragraph (1) above are –

i. the applicant;

ii. any persons who have lodged a formal objection to the planning application in writing to the planning authority for the area in which the land to which the application relates is situated; or

iii. other persons at the discretion of the Department.

Appeals

32.—(1) Where an application is made to the Department—

(a) for planning permission to develop land; or

(b) for any consent, agreement or approval of the Department required by a condition imposed on a grant of planning permission; or

(c) for any approval of the Department required under a development order;

then if that permission, consent, agreement or approval ***is granted***, is refused or is granted subject to conditions, ~~the applicant~~ ***certain persons as specified in sub-paragraph (d)*** may by notice in writing under this Article appeal to the planning appeals commission.

(d) Persons who may by notice appeal to the planning appeals commission in the circumstances specified in paragraph (1) above are –

i. the applicant;

ii. any persons who have lodged a formal objection to the planning application in writing to the planning authority for the area in which the land to which the application relates is situated; or

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iii. other persons at the discretion of the department.

(2) Paragraph (1) shall not apply to any application in relation to which the Department has served a notice under Article 31(1).

(3) Any notice under this Article shall be served on the planning appeals commission within six months from the date of notification of the decision to which it relates or such longer period as the commission may allow.

(4) Where an appeal is brought under this Article from a decision of the Department, the planning appeals commission, subject to paragraphs (5) and (6), may allow or dismiss the appeal or may reverse or vary any part of the decision whether the appeal relates to that part thereof or not and may deal with the application as if it had been made to it in the first instance.

(5) Before determining an appeal under this Article, the planning appeals commission shall, if either the applicant or the Department so desires, afford to each of them an opportunity of appearing before and being heard by the commission.

(6) Subject to paragraph (5), Articles 21 to 28 shall apply, with any necessary modifications, in relation to an appeal to the planning appeals commission under this Article as they apply to an application for planning permission.

The Appeals Process

In order to allow the Planning Appeals Commission that discretion to deal with frivolous and vexatious appeals the following clause would need to be introduced either in article 38 or into the appropriate secondary legislation.

‘The planning appeals commission shall have a discretion to dismiss an appeal or referral where, having considered the grounds of appeal or referral, the planning appeals commission is of the opinion that the appeal or referral –

- i. is vexatious, frivolous or without substance or foundation; or**
- ii. is made with the sole intention of delaying the development or the intention of securing the payment of money, gifts, consideration or other inducement by any person.’**