

# OPENING LOCAL GOVERNMENT

Community engagement in local planning  
in Northern Ireland

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we all live here

Open  
Government  
Network

Northern Ireland



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# FOREWORD

By the Board of the Northern Ireland Open Government Network

This report was commissioned by the Northern Ireland Open Government Network (NIOGN) and represents the culmination of our project 'Open Local Government - Creating Local Action Hubs' which has been generously funded by The National Lottery Community Fund. The project, which started in 2021, aims to apply open government approaches as a practical lens that can add value to local campaigns on issues important to citizens across Northern Ireland.

In the first phase of our Open Local Government project we organised a series of virtual workshops targeting all corners of Northern Ireland and engaging with community groups, active citizens and statutory bodies to find out how open government issues, at local level, were impacting the quality of relationships between people and statutory bodies as well as people's ability to raise and secure action on the issues that are important to them in their locality.

Across these workshops, challenges such as transparency in decision-making, poor record-keeping, few or inaccessible opportunities for public participation, accountability of elected representatives and limited access to information were raised. Participants experienced these challenges in seeking engagement or action on a whole range of issues such as the environment, waste management, the use of public land, food production and economic development. A number of these issues and challenges centred on weaknesses within Northern Ireland's planning system, with two particular cases - in Maghera and Newry - seeming to illustrate this.

As such we commissioned this report to explore these challenges in more detail, consider them in the context of wider transparency standards and frameworks and to help pinpoint specific opportunities for improvement and reform. We were delighted to be able to engage the services of Andy McDevitt, a consultant with more than 15 years global research and policy experience in the field of open government and anti-corruption, including leading on the development of Transparency International's [Local Integrity System](#) (LIS) Assessment methodology which assesses the existence and effectiveness of procedures and mechanisms to promote transparency, accountability and integrity at the local level.

Whilst this is not the first report exploring the need for reform in Northern Ireland's planning system, we hope it will help catalyse a constructive dialogue at local level about what immediate improvements could be made, whilst also recognising the underlying need for systemic reform. We at NIOGN remain ready to support reformers both inside and outside government to take action in the months and years ahead.

The [NIOGN](#) was established in 2014 as an alliance of individual citizens, activists and representatives of community and voluntary organisations. The Network's aim is to contribute to delivering a more open, transparent, and accountable government in Northern Ireland that empowers citizens to shape decisions that impact on their lives.

We are part of the global [Open Government Partnership](#) (OGP), which comprises 77 national governments, 106 local governments (including the NI Executive) and thousands of civil society organisations, collaborating to deliver reforms that make government more accessible, more responsive, and more accountable to citizens. We are affiliated with the UK Open Government Network and are the recognised lead civil society organisation for OGP in Northern Ireland. As members of the Open Government Implementation Group convened by the Department of Finance, we engage in dialogue with government about what open government reforms should form the basis of [Northern Ireland's OGP action plans](#), both current and future.

Through this work we hope to grow and diversify our network membership - anyone based in or from Northern Ireland, and who is not already a senior decision-maker, is welcome to join our network through completing a simple expression of interest form on our website [here](#).

# INTRODUCTION

The planning system in Northern Ireland has been the subject of much research and scrutiny over recent years since responsibility for planning was devolved to local authorities in 2015 (see Box 1). In the past two years alone, four seminal reports have been published which shine a light on many of the challenges which have faced the system since its decentralisation. These studies include a survey of stakeholder opinions of the planning system in Northern Ireland conducted by Queen's University Belfast (QUB) in 2020<sup>1</sup>, as well as three public sector reports from the Northern Ireland Assembly's Public Accounts Committee (2022)<sup>2</sup>, the Northern Ireland Audit Office (2022)<sup>3</sup> and the Department for Infrastructure's (DfI) Public Engagement Partnership (PEP) (2022)<sup>4</sup> respectively.

It is instructive that much of the public sector research to date has focused on the efficiency of the planning system and specifically on the time it takes to process applications rather than on the outcomes the planning system delivers for citizens. This is indicative of a system which, as we shall see below, has evolved to prioritise efficiency and growth above community needs or environmental sustainability. The PEP report, as a recent attempt to understand and enhance the

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<sup>1</sup> <https://www.qub.ac.uk/schools/NBE/Research/research-projects/StakeholderEvaluationofPlanningProjectSEPP/>

<sup>2</sup> <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/pac/reports/planning-in-ni/public-accounts-committee---planning-in-northern-ireland.pdf>

<sup>3</sup> <https://www.niauditoffice.gov.uk/files/niauditoffice/media-files/NIAO%20Report%20-%20Planning%20in%20NI.pdf>

<sup>4</sup> <https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/pep-report-22032022.pdf>

quality and depth of community engagement in the planning process, is a notable exception. However, while the report offers a range of practical recommendations to strengthen community engagement, these focus largely on technical solutions (training, awareness raising, better publicity, etc) rather than addressing key systemic and political challenges that make meaningful engagement in the system so hard, such as the imbalance of power and litigious culture and which pervade the system.

## Box 1: Decentralised planning

In 2015, Northern Ireland adopted a two-tier system for planning with responsibility for delivering the majority of operational planning functions passing to local councils. Specifically, the **11 councils** in Northern Ireland are now responsible for:

- **Local development planning:** setting out a vision of how the council area should look in the future by deciding what type and scale of development should be encouraged and where;
- **Development management:** determining the vast majority of planning applications;
- **Planning enforcement:** investigating alleged breaches of planning control and determining what action should be taken.

Meanwhile the **Department for Infrastructure (Dfi)** is responsible for, among other things:

- Oversight and performance monitoring
- Planning legislation
- Regional planning and policy
- Determination of regionally significant and 'called-in' planning applications.

*The Planning Act (NI) 2011 (the Act)*



# ABOUT THIS REPORT

The present report aims to add to this body of work by specifically focusing on these issues from the perspective of communities themselves. As the opening statement of the Strategic Planning Policy Statement (SPPS) - Northern Ireland's overarching policy directive on planning - explicitly states:

*“(t)he overall objective of the planning system is to further sustainable development and improve well-being for the people of the North.”<sup>5</sup>*

This report is structured as follows:

**Part 1: Systemic challenges to community engagement in local planning** provides a brief overview of some of the cross-cutting weaknesses which have been identified with regards to the planning system in Northern Ireland with a focus on those which have a particular impact on community engagement.

**Part 2: Experience of community engagement in local planning** explores community experience with engaging in local planning in practice at the development planning stage, and development management stage (pre-application and post-application). It focusses, in particular, on two local authorities: Newry Mourne and Down District Council and Mid Ulster District Council.

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<sup>5</sup> <https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/SPPS.pdf>

**Part 3: Cases studies** presents two concrete examples of community consultation processes in the two local authorities to illustrate the consequences for all stakeholders when councils fail to meaningfully engage with communities early on when deciding on important development proposals.

**Part 4: Conclusion and recommendations** offers recommendations on how to begin to redress the balance in favour of the public interest, whilst recognising that many of the systemic challenges facing the planning system will require broader reforms.

The report draws on existing research, media reports, and publicly available documents available through the Northern Ireland Planning portal, as well as key informant interviews with stakeholders including Department for Infrastructure (DfI) representatives, local councillors and planning officers, academics, and representatives of non-governmental organisations and community campaign groups. Interviewees have been partially anonymised to protect their identity.

*“When it comes to consultation, a lot of what I’ve seen in Northern Ireland is tokenism”.<sup>1</sup>*

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# **PART ONE: SYSTEMIC CHALLENGES TO COMMUNITY ENGAGEMENT IN LOCAL PLANNING**

## A culture of fear and aversion to risk

The stakeholders interviewed for this report were almost unanimous in their characterisation of the planning system in Northern Ireland as overly legalistic, confrontational, and litigious. Local politicians are risk averse due to the fact that they can be held individually legally liable for their decisions and fear being threatened with court actions by aggressive developers.<sup>6</sup> Communities are alienated by the complexity of the system and tend to respond in ways which can overwhelm both planners and politicians.<sup>7</sup> Planners themselves are defensive and feel under constant threat of challenge, even with regard to small technical issues. This has created a debilitating culture, in which planners find it difficult to make decisions and engage meaningfully with communities.<sup>8</sup>

## A system weighted in favour of economic growth over public interest and community needs

The adversarial nature of planning is, according to one expert, largely a product of the failure to apply a proper public interest test for important developments, and the absence of a shared vision for what the system should be delivering.<sup>9</sup> One study of planning from 2017, for example, argues that property and business interests have dominated the understanding and measurement of public benefit, at the expense of local communities, especially those who are

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<sup>6</sup> Interview with PE1

<sup>7</sup> Interview with NGO2

<sup>8</sup> Interview with Df1

<sup>9</sup> Interview with PE3

already disempowered economically and socially.<sup>10</sup> This, in turn, is reflected in how the planning system is monitored, with the Department for Infrastructure's (DfI) Planning Monitoring Framework predominantly concerned with the speed and quantity of decisions, rather than quality of outcomes.<sup>11</sup>

According to a 2020 survey from Queen's University Belfast (QUB), 70% of all respondents believe that the planning system in Northern Ireland serves the public interest poorly or very poorly, while 80% of those who use the system (developers, private sector planners, and citizens) rate its delivery of the public interest as poor or very poor.<sup>12</sup>

As a result, the planning system acts as little more than a rubber stamp for pre-approved projects driven by economic growth above other considerations. It has, according to one expert, largely failed to internalise any considerations related to quality of life or other social issues such as climate change.<sup>13</sup>

## An imbalance in power and influence

The 2020 QUB survey also reveals an overall perception that planners' relationships with community groups and environmental organisations are too distant while relationships with developers, politicians and business interests have a tendency to be too close, suggesting an imbalance in influence. The same report found that while half of councillors feel that their views on planning decisions are

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<sup>10</sup> <https://pure.qub.ac.uk/en/publications/on-the-waterfront-neoliberal-urbanism-and-the-politics-of-public->

<sup>11</sup> <https://www.niauditoffice.gov.uk/files/niauditoffice/media-files/NIAO%20Report%20-%20Planning%20in%20NI.pdf>

<sup>12</sup> <https://www.dtni.org.uk/wp-content/uploads/2021/06/Community-rights-compendium-of-papers.pdf>

<sup>13</sup> Interview with PE3

always or generally considered when they give them, this is only 3% for citizens.<sup>14</sup>

The inordinate influence of big economic interests, including planning consultants, are eroding trust in the planning system.<sup>15</sup> At the same time, the continued lack of transparency around political donations adds to the perception that the planning system is malleable and open to undue influence. A recent report by the Electoral Commission found that, despite recent reforms, citizens do not see the current system of political donations in Northern Ireland to be transparent, with the current thresholds at which donations need to be reported to the Commission for publication considered too high.<sup>16</sup>

## Councils ill-equipped to manage their devolved responsibilities

The legacy of a centralised planning system with poor democratic oversight prior to 2015 means that local councils are not well equipped to effectively deal with either the technical complexity or the political pressures of the new planning system. According to some stakeholders, council level decision-makers don't have the skills, competence or experience to conduct community engagement.<sup>17</sup> The lack of in-house skills opens up the system to greater influence from commercial consultants who are inevitably conflicted by their commercial work<sup>18</sup>, further exacerbating the imbalance of power.

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<sup>14</sup> <https://www.dtni.org.uk/wp-content/uploads/2021/07/Building-the-Capacity-of-the-Planning-System-by-Jenny-Crawford-et-al.pdf>

<sup>15</sup> Interview with PE3

<sup>16</sup> <https://www.electoralcommission.org.uk/who-we-are-and-what-we-do/our-views-and-research/our-research/northern-ireland-political-transparency-research>

<sup>17</sup> Interview with CG2

<sup>18</sup> Interview with PE2

The immaturity of local councils is evident, in the view of some interviewees, in terms of both their competency in making decisions and their political bias.<sup>19</sup> Councillors are reluctant to engage: they are not given enough training and fear being held legally and financially liable for unreasonable decisions, even though this rarely happens in practice. While councils have grown in confidence to challenge proposed developments, many still lack the knowledge and expertise to do so effectively.<sup>20</sup> As a result, councillors tend to follow planning officers' recommendations and operate through collective responsibility while silencing any dissenting voices, which effectively removes any internal checks and balances.<sup>21</sup>

## Communities ill-equipped to navigate a complex system

Diverging interests, large volumes of information, specialist knowledge, and sometimes lengthy and legalistic processes can mean it is difficult to navigate the complexities of the system which can deter communities from becoming involved.<sup>22</sup> The sheer volume of information, especially for regionally significant or major developments, can be difficult for citizens to digest.<sup>23</sup>

Engaging in the planning system therefore requires a significant amount of investment in terms of time and expertise. This puts the community at a clear disadvantage compared to wealthy developers and their consultants. One

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<sup>19</sup> Interview with NGO2

<sup>20</sup> Interview with LC1

<sup>21</sup> Interview with LC2

<sup>22</sup> <https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/pep-report-22032022.pdf>

<sup>23</sup> Interview with DfI2

community representative noted that communities often need to “tool up” and hire lawyers and development consultants in order to have any chance of success in challenging applications.<sup>24</sup> While middle class neighbourhoods may have some reserves of professionals and resources to deal with these issues, the capacity in poorer communities to engage in a very technical and policy driven planning system is very low.<sup>25</sup>

While there are community support facilities and advice services in place, such as Community Places (funded by the Department for Infrastructure (DfI), these are under-resourced.<sup>26</sup> There is also a lack of awareness among the community about such services and it is difficult to find clear planning information online upon which decisions are made.<sup>27</sup>

## Absence of effective recourse mechanisms

Only applicants have the right to submit an appeal against a planning decision to the Planning Appeals Commission (PAC) in Northern Ireland. There is no third party (or equal) right of appeal.<sup>28</sup> As a result, third parties are left with little option to challenge decisions, other than by pursuing judicial reviews. This is expensive, time consuming and confrontational for all

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<sup>24</sup> Interview with CG1

<sup>25</sup> Interview with PE2

<sup>26</sup> Interview with NGO1

<sup>27</sup> <https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/pep-report-22032022.pdf>

<sup>28</sup>

[https://www.newrymournedown.org/media/uploads/statement\\_of\\_community\\_involvement\\_november\\_2017.pdf](https://www.newrymournedown.org/media/uploads/statement_of_community_involvement_november_2017.pdf)



those involved<sup>29</sup> and diverts resources away from the main planning processes.<sup>30</sup>

Furthermore, the judicial review system is inadequate as a forum to mediate the complex issues of planning.<sup>31</sup> While a judicial review may decide on procedural issues, it doesn't prevent the same substantive application coming in again once the procedural issue has been addressed.<sup>32</sup> This is because decisions on planning applications can only be made on the basis of "material planning considerations", with each application to be treated on its own merits. This ignores the wider context in which planning decisions are made or any consideration of alternative proposals.<sup>33</sup>

Beyond judicial reviews, the only mechanisms that communities have to challenge decisions are through complaints or referrals to the Ombudsman<sup>34</sup> or the Local Government Auditor<sup>35</sup>. In practice, however, it has been noted that recourse to the Ombudsman has at best led to (often minimal) fines on the council or compensation being awarded, but without the issue which led to the complaint itself being addressed<sup>36</sup>, while one community representative alleged that serious planning issues raised with the Local Government Auditor have been routinely ignored<sup>37</sup>.

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<sup>29</sup> <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/pac/reports/planning-in-ni/public-accounts-committee---planning-in-northern-ireland.pdf>

<sup>30</sup> <https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/pep-report-22032022.pdf>

<sup>31</sup> Interview with NGO2

<sup>32</sup> Interview with NGO1

<sup>33</sup> Interview with PE1

<sup>34</sup> <https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/pep-report-22032022.pdf>

<sup>35</sup> Interview with CG2

<sup>36</sup> Interview with NGO1

<sup>37</sup> Interview with CG2

## A disconnect between how different stakeholders view the challenges

Perhaps most disconcerting of all is the disconnect between how different stakeholders view the challenges within the planning system. The 2020 QUB report found that while over 75% of citizens judged that the transfer of planning powers to local authorities had had a negative impact on transparency and accountability, 80% of local councillors believed that the transfer has had a positive impact.<sup>38</sup>

The report also identified a strong disparity between who different stakeholders view as the most powerful actors within the system. Citizens and those from voluntary organisations saw developers as the most powerful actors while councillors saw local authority planners and the Planning Appeals Commission (PAC) as the most powerful. Planners see a more balanced distribution between developers, councillors and the PAC, while developers see most power lying with members and officials of the local planning authority and the PAC. One thing on which all stakeholders agreed, however, was that citizens are by far the least powerful.<sup>39</sup>

This suggests a disconnect between the views of those delivering the planning system and those who are seeking to

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<sup>38</sup> <https://www.dtni.org.uk/wp-content/uploads/2021/07/Building-the-Capacity-of-the-Planning-System-by-Jenny-Crawford-et-al.pdf>

<sup>39</sup> <https://www.dtni.org.uk/wp-content/uploads/2021/07/Building-the-Capacity-of-the-Planning-System-by-Jenny-Crawford-et-al.pdf>

use or influence its outcomes, about how the system delivers public interest.<sup>40</sup> As noted by one interviewee:

*“Many community groups and NGOs will tell you the problem is that the whole system is failing. In this context, simply meddling with participation might make things worse by increasing expectations.”<sup>41</sup>*

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<sup>40</sup> <https://www.dtni.org.uk/wp-content/uploads/2021/07/Building-the-Capacity-of-the-Planning-System-by-Jenny-Crawford-et-al.pdf>

<sup>41</sup> Interview with PE3

**PART TWO:  
EXPERIENCE OF  
COMMUNITY  
ENGAGEMENT IN  
LOCAL PLANNING**

# A. DEVELOPMENT PLANNING

A key element of the 2015 reform of the planning system was the introduction of Local Development Plans (LDPs). The LDP process was seen as an opportunity to frontload the system by including communities early on in shaping the planning vision for their areas and hence removing some of the contention at the development management stage (see Box 2).

However, in practice, the LDP process has proven itself to be just as susceptible to the technocratic and litigious culture which permeates the planning sector as the rest of the system. It has been plagued by delays and is a long way from meeting its stated objectives in terms of frontloading community engagement (see Box 3).

*“We need to recognise that more co-design and proactive planning may de-risk and make development faster, more consensual and better - for all concerned. [...] At the moment, because there is no coherent vision that people can look to in their area, everything is case-by-case and random.”<sup>42</sup>*

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<sup>42</sup> Interview with PE2

## Box 2: Community engagement in LDP process

To inform the process for developing its Local Development Plan (LDP), each council developed a Statement of Community Involvement (SCI) to lay out the steps it would take to engage communities in planning throughout the planning process. As articulated in their respective SCI's, both Newry Mourne and Down District Council's and Mid Ulster District Council's approach to community involvement was to be based on a number of key principles, namely that:

people should know that they are encouraged to take part in the planning process, and that decision makers are interested in their views;

community should be involved at an early stage in the preparation of local development documents and major development proposals;

community should be involved throughout the process, both formally and informally;

the methods used to encourage involvement should be appropriate to people's experience and needs and fit for purpose;

the planning process and timetables for producing or reviewing local development documents should be clear.

Taking these principles into account, each council was to develop a local development plan comprising three separate documents

**A Preferred Options Paper** (consultation document) setting out the key plan issues, identifying a range of options available to address them and defining their preferred options;

**A Plan Strategy** presenting a range of strategic policies to facilitate and manage development and a spatial strategy that would indicate where different types of development will be promoted;

**A Local Policies Plan** outlining site specific proposals, policy designations and land use zonings required to deliver the Plan Strategy, objectives, and strategic policies.

To oversee the process, the Department for Infrastructure (DfI) set up an **independent examination** process to assess each of these documents against a series of soundness tests including how the public have been involved in the process.

## Slow pace of LDP development

Performance in preparing LDPs has been painfully slow. Whilst there was an initial expectation that plans would be completed within three and a half years, the most recent projections provided by councils suggest that it will be 2028 before there is an LDP in place in each council area, 13 years into a 15-year cycle. As a result, many councils are still relying on outdated area plans - in some cases over 30 years old - which do not reflect the current needs and priorities of the area<sup>43</sup>, while there is the risk that LDPs themselves will be out of date by the time they are enacted.<sup>44</sup>

Despite the slow progress, the Northern Ireland Audit Office estimates that the total spend to date on development of LDPs ranges from £1.7 million to £2.8 million per council, figures that would be equivalent to the total annual cost of delivering planning functions within most councils.<sup>45</sup>

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<sup>43</sup> <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/pac/reports/planning-in-ni/public-accounts-committee---planning-in-northern-ireland.pdf>

<sup>44</sup> Interview with LC1

<sup>45</sup> <https://www.niauditoffice.gov.uk/files/niauditoffice/media-files/NIAO%20Report%20-%20Planning%20in%20NI.pdf>

### Box 3: The LDP process in Newry Mourne and Down and Mid Ulster

The LDP process in Newry Mourne and Down District Council has been repeatedly delayed, with the latest revision of the timetable approved on 6<sup>th</sup> September 2022. At the time of writing, the council has yet to move beyond Stage 1 (the Preferred Options Paper (POP)). While the POP itself has been published, there is no publicly available consultation report on the POP outlining the responses received in relation to the consultation on the POP and its supporting documents.

The process is more advanced in Mid Ulster District Council, which published its draft Plan Strategy on 22<sup>nd</sup> February 2019. The Draft Plan Strategy was subject to an 8-week consultation period followed by a counter-representation period. Due to a procedural error, the Council re-consulted on its Draft Plan Strategy in 2020. The draft Plan Strategy was submitted to the Department for Infrastructure (DfI) on 28th May 2021.

The level of transparency around the LDP process in Mid Ulster District Council is greater than in Newry Mourne and Down District Council, including the publication of all representations and counter representations as well as consultation reports outlining how representations were taken into consideration in the development of both the strategy and the Preferred Options Paper (POP). An easy-read version of the POP was also published to facilitate public understanding.

## Overly technical and complex process

Despite its intention to engage communities, the LDP process has been drawn out and couched in complex, technical language, presented through long, inaccessible documents. While some councils (e.g. Belfast) have created a youth friendly version<sup>46</sup> and summary document<sup>47</sup> of their Preferred options Paper (POP), this is not the norm. As a result, it can be difficult to keep the community engaged throughout. The process was described by one local councillor

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<sup>46</sup> [https://www.belfastcity.gov.uk/getmedia/a290a253-6f2f-417d-8e0c-b996fe99e300/POP001B\\_POP-YouSum.pdf](https://www.belfastcity.gov.uk/getmedia/a290a253-6f2f-417d-8e0c-b996fe99e300/POP001B_POP-YouSum.pdf)

<sup>47</sup> [https://www.belfastcity.gov.uk/getmedia/4e8a4916-ca25-4a2b-9b26-817a865b23f4/POP001A\\_POP-Sum.pdf](https://www.belfastcity.gov.uk/getmedia/4e8a4916-ca25-4a2b-9b26-817a865b23f4/POP001A_POP-Sum.pdf)



as “long, tedious and convoluted” and “a very legalistic way of consulting”.<sup>48</sup> As an example, the soundness test at the draft Plan Strategy stage is very narrow, technical and restrictive and communities don’t have the expertise to engage. The 8-week consultation phase is too short for a very long and substantial document. As a result, according to one local councillor, it tends to be the better resourced residents’ groups, industry groups and other organised bodies that engage, rather than individuals.<sup>49</sup>

One community member who attended the LDP consultation in Mid Ulster described a complex and extremely detailed process run by planners speaking “*a different language*”.<sup>50</sup> In contrast, many large businesses have engaged planning consultants to feed into the process giving them more power to affect LDPs than communities. Thus, the fundamental power imbalance described in Part 1 inevitably permeates the LDP process too.

## Absence of any co-created “community vision”

A fundamental flaw with the LDP process is that the plans are not predicated on a joint community vision which is co-created at the local level. The complexity of the LDP process means that it does not allow effective engagement around local issues which are relevant and tangible to members of the public. While the latter stage of the planning process which has yet to be completed (i.e. the Local Policies Plan) is expected to focus on more concrete proposals, the danger is

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<sup>48</sup> Interview with LC1

<sup>49</sup> Interview with LC1

<sup>50</sup> Interview with CG1

that key decisions will already have been signed off and much of the local community disengaged by that point.

According to one community representative who engaged early on in their local LDP process, there was no room to ask about or express aspirations:

*“There is no sense in which the community is driving the agenda. Nobody comes and asks you what you want, what you would like to see, what you would change. The process takes no account of community dynamics or local history.”<sup>51</sup>*

The LDP process also fails to take sufficient account of other local place shaping activities, such as community planning, local economic development, regeneration and environmental enhancement etc. Many community groups have developed place making and ‘neighbourhood renewal plans’ going back 15 or more years, but these appear to be completely disconnected from the LDP process.<sup>52</sup> While community planning and local development planning are both moving forward, they have not yet been aligned in terms of timelines. In theory the LDP should be the spatial expression of the issues identified in the local community plan, but according to one NGO representative, this has yet to be achieved.<sup>53</sup>

Instead, the process relies largely on a system of representations and counter-representations, thus reproducing the adversarial approach which the LDP process is supposed to help mitigate against. A further problem,

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<sup>51</sup> Interview with CG1

<sup>52</sup> Interview with PE2

<sup>53</sup> Interview with NGO1

according to one interviewee, is that there is no mechanism for planners to engage in a way that would resolve differences among different interests: *“Ultimately, the expectation is that these will simply end up in the courts.”*<sup>54</sup>

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<sup>54</sup> Interview with NGO2

## **B. PRE-APPLICATION CONSULTATION**

As well as introducing the LDP process, the 2015 reforms introduced the requirement for applicants for regionally significant or major developments to consult with the local community as part of the pre-application phase (see Box 4).

However, as discussed below, the practice of pre-application consultation has proven wholly inadequate in large part because it is designed and carried out in a way that alienates the community.

Whether consultation takes place before an application enters the formal planning system or as part of the formal Pre-Application Community Consultation (PACC) process, experience from Newry Mourne and Down and Mid Ulster shows how they have acted as little more than “tick-box” exercises designed to ensure community approval of existing plans with as little objection as possible (see Part 3: Case studies).

### **Communities excluded from Pre-Application Discussions (PADs)**

The objective of PADs is to confirm whether the principle of development is acceptable, to provide an opportunity for council officials, statutory consultees and developers to meet to consider important issues that may affect an application’s likelihood of success, and to discuss details of how the community should be involved in decision-making. However, the community itself is not included in this process which means that key decisions are made and plans substantially

advanced before the community has had any chance to have a say.

## PACCs led by developers with limited oversight

Because they are excluded from Pre-Application Discussions (PADs), the first time that the community usually has an opportunity to input into the process is at the Pre-Application Community Consultation (PACC) stage. The theory is that the developer would discover through this process where there is likely to be community objection or concern and amend the proposal to account for these. However, it is the developer/applicant themselves that is responsible for running the consultation and reporting on it to the council which presents a clear conflict of interest given that they ultimately control what is considered and what is not in the PACC process.

For major developments, planning authorities may provide the applicant with a list of key community stakeholders and interest groups who should be targeted as part of a PACC and encourage applicants to tailor engagement to the specific proposal, but this is not a requirement. According to a representative of one planning department, the council sticks to the statutory requirements in terms of PACC because going beyond that would open the council up to possible legal challenge.<sup>55</sup> Instead, the role of the council at this stage is largely to assess whether the consultation is sufficient and meets the legal minimum. In practice, according to one interviewee, there is little focus on the quality of the

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<sup>55</sup> Interview with PO1

engagement or how the plan has been amended as result of the engagement, but simply on whether it has been done.<sup>56</sup>

Furthermore, from the community perspective, the PACC process has quite often caused confusion. By participating in a PACC, community members may feel that they have made their comments to the council, but this is not the case. The developer submits the PACC report along with the application, but this is their version of what has been said. As a result, it has been noted, communities often find that they have to raise the same issues again with the council once the application is submitted.<sup>57</sup>

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<sup>56</sup> Interview with NGO1

<sup>57</sup> Interview with NGO1

## PACCs limited in scope

According to representatives of the Department for Infrastructure (DfI) interviewed for this report, the PACC process is effective at identifying issues of community concern with major applications. While developers were initially resistant to PACCs as they felt it would slow down the application process, they have reported anecdotally that the process has enabled them to identify and address issues, hence avoiding challenge further down the line.<sup>58</sup>

*“If PACCs are done right they can really help communities understand a project. It doesn’t mean they will support it – that’s not what it’s there for. It’s there to alert them to the opportunity to address their concerns. In theory, what then ends up as a planning application will have taken account of community concerns, so that at least some elements may have been addressed.”<sup>59</sup>*

A key issue with this approach, as discussed earlier, is that planning authorities can only consult on the development under consideration, based on “material considerations”. If a proposal abides by planning policy, it is difficult for the council to challenge it. More important issues are not taken into consideration and there is no room to discuss alternatives. When understood in these terms, as noted by two local councillors, the process acts as little more than a rubber stamp and has little to do with meeting the community need.<sup>60</sup>

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<sup>58</sup> Interview with DfI1; Interview with DfI2

<sup>59</sup> Interview with DfI2

<sup>60</sup> Interview with LC1; Interview with LC2

It is also worth noting that only regionally significant and major applications are required to undergo a PACC, not local developments. In reality, local developments can include anything from small householder developments (such as an extension) to more significant developments, because the threshold for major is quite high (e.g. a housing development that comprises 50 units or more).<sup>61</sup> Thus, many developments which have the potential to impact significantly on the community are excluded from the PACC requirement altogether.

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<sup>61</sup> <https://www.legislation.gov.uk/isr/2015/71/schedule/made>



## Box 4: Pre-application Community Consultation

### Box 4: Pre-Application Community Consultation

By law, applicants submitting major applications to a Council or the Department of Infrastructure (DfI) are required to undertake a **Pre-Application Community Consultation (PACC)** before submitting their application. The PACC process requires the application, at a minimum, to:

- notify the Council, at least 12 weeks in advance, that an application for a major planning application is to be submitted. Through a **Proposal of Application Notice (PAN)**;
- hold at least one public event where the community will be afforded the opportunity to make comment;
- publish details of the proposal in the local press, outlining a description of, and the location of, the proposed development; details as to where further information can be obtained about the proposed development; the date, time and place of the public event; and a statement explaining how and when people who want to make comments can do so;
- submit a PACC report on submission of the planning application.

In addition to PACCs, applicants are encouraged to conduct **Pre-Application Discussions (PADs)** with the local council, especially for major applications, although these are not a legal requirement.

## C. POST-APPLICATION ENGAGEMENT

### Good levels of reactive transparency but limited proactive transparency

Reactive transparency around planning applications is generally good. The results of planning committee decisions on applications are available on the websites of both Newry Mourne and Down District Council<sup>62</sup> and Mid Ulster District Council<sup>63</sup>, although the arrangement of information is not always intuitive. Additional details are also available on the Northern Ireland Planning Portal<sup>64</sup>, including correspondence with statutory consultees and applicants, impact assessments, neighbour notifications, planning decisions and representations/objections. Case Officer reports can be accessed online and generally summarise the feedback received and how this was taken into account. In the case of Mid Ulster District Council, these are available on the council's dedicated Planning Portal.<sup>65</sup> Anyone can comment or raise an objection on a planning application for consideration.

However, the level of *proactive* transparency is more limited and can present an important obstacle to community engagement. Quite often, according to one NGO representative, the first moment people realise a development

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<sup>62</sup> <https://www.newrymournedown.org/planning-committee-meeting-minutes>

<sup>63</sup> [https://mid-ulster.cmis-ni.org/midulster/Committees/tabid/62/ctl/ViewCMIS\\_CommitteeDetails/mid/381/id/5/Default.aspx](https://mid-ulster.cmis-ni.org/midulster/Committees/tabid/62/ctl/ViewCMIS_CommitteeDetails/mid/381/id/5/Default.aspx)

<sup>64</sup> <https://epicpublic.planningni.gov.uk/publicaccess/>

<sup>65</sup> <https://www.midulstercouncil.org/planning>

is in the pipeline is when an application has been approved.<sup>66</sup> The law requires planning applications to be advertised in at least one local newspaper and on the local council's or the Department's website but there is no requirement for site notices. Furthermore, changes made to the neighbour notification process as part of the 2015 planning reforms meant that the range of those who are required to be notified was narrowed to only those whose land directly adjoins a development site (previously the range was broader).<sup>67</sup> As a result, people who might be affected by a development but who are not directly adjacent to it may only find out about it late on in the process.

## Council decision-making processes unclear

Of particular concern is the lack of clarity around decision-making processes on planning applications at council level which, as noted by the Public Accounts Committee (PAC) report, leaves decision makers ill-equipped to defend themselves against allegations of corruption and contributes to mistrust.<sup>68</sup>

Every council has a different scheme of delegation and different thresholds for the number of objections which are needed for an application to go to committee. Specifically, call-in procedures (whereby councillors may "call-in"

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<sup>66</sup> Interview with NGO1

<sup>67</sup> [https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/dmpn-14-publicity-neighbour-notification-v1-april-2015\\_0.pdf](https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/dmpn-14-publicity-neighbour-notification-v1-april-2015_0.pdf)

<sup>68</sup> <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/pac/reports/planning-in-ni/public-accounts-committee---planning-in-northern-ireland.pdf>

applications for consideration and decision by the planning committee) vary considerably among councils, and it is not always clear, even to members of the same planning committee, why certain applications are called in.<sup>69</sup> The timing also differs, with some councils calling-in applications early on in the process, while others wait until a decision is pending.<sup>70</sup>

The rate of decisions which are overturned by planning committees against the advice of planning officers also varies considerably from council to council (2% in Mid Ulster District Council as compared to 25% in Newry Mourne and Down District Council)<sup>71</sup>, while the grounds for overturns are not always clear.<sup>72</sup>

## System of objections and representations stacked in favour of developers

Individuals, groups and organisations can raise objections to a planning application even if they have not been neighbour-notified by the council. However, as described by one councillor, the way in which individuals who have objected are kept informed is indicative of the lack of transparency inherent in the system: When an individual lodges an objection, they receive a stock letter printed off from the central planning portal system. They are then notified if/when changes are made to an application, again via a stock letter, which does not explain what those changes are. Likewise, when changes are

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<sup>69</sup> <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/pac/reports/planning-in-ni/public-accounts-committee---planning-in-northern-ireland.pdf>

<sup>70</sup> Interview with LC1

<sup>71</sup> <https://www.niauditoffice.gov.uk/files/niauditoffice/media-files/NIAO%20Report%20-%20Planning%20in%20NI.pdf>

<sup>72</sup> Interview with Df11; Interview with NGO1

made to an application following objections, the council planning committee is informed about whether there have been any further objections since those changes were made but is given no information on whether the changes actually addressed the original objections. As a result, it is not always clear whether specific objections have been resolved.<sup>73</sup>

Anyone who has raised an objection may also apply to make a representation when the application goes to committee for decision. A representation can only be made once an application has been submitted. The process for making a representation is detailed and complex and requires a good deal of organisation on the part of the objector. The onus is entirely on the individual who has made the objection to find out when the application is going to committee and to then submit a request to speak.

Once at committee, objectors have five minutes to make their case (and that time is shared among all objectors, who rarely form one cohesive group). This can be a daunting prospect for community members, especially when set against a developer who is well versed in the intricacies of the planning system, has more time to respond and can draw on experts.

In this context, it is not clear what objections are supposed to achieve. According to one councillor, in practice objections are just there to be explained away:

*“I have very rarely seen community objections actually leading to any change. There has to be a better way. It doesn't mean objections always need to lead to*

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<sup>73</sup> Interview with LC1

*changes (you can't please all the people all the time) but there has to be a balance and currently that balance is not there, which leads to apathy and mistrust in the system. People feel that development is being done upon them or against them, rather than with them."*<sup>74</sup>

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<sup>74</sup> Interview with LC1

# **PART THREE: CASE STUDIES**

The following case studies provide two examples of significant community opposition to council led developments in Newry, Mourne and Down District Council and Mid Ulster District Council, the first *before* an application enters the formal planning system, and the second *as part* of the formal Pre-Application Community Consultation (PACC) process. The purpose of these case studies is not to pass judgement on the relative merits of the two proposals, but rather to illustrate how the current system is unable to adequately handle such conflicts, largely because key decisions have been made before any public consultation is carried out.

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## **A. Newry City Centre Regeneration and the Albert Basin Park**

### Timeline of key events

#### **Newry City Centre Regeneration**

In 2015, shortly after the merger of Newry and Mourne District Council and Down District Council to form the new Newry Mourne and Down District Council, the council announced the decision to build a new Civic Centre in Newry to host offices for council staff and civil servants. Two years later, the council agreed to allocate £20 million to the project,



although a full business case for the Civic Centre had not been presented.<sup>75</sup>

In 2020, the council published its Regeneration and Economic Development Strategy for 2020-2025.<sup>76</sup> Among the seven Strategic Investment Proposals contained in the strategy was the regeneration of Newry City, which included the new Civic Centre, along with a theatre and conference facility, office accommodation, public realm development and the development of a park in the Albert Basin. The strategy was informed by a series of one-to-one and group consultations with businesses, stakeholders, and partners, but there was no community consultation. According to one interviewee, a consultation was not deemed necessary at the time because the proposal was part of the council's original capital plan that was developed when the councils were merged.<sup>77</sup>

It was not until 2021 that a public consultation exercise was carried out on the Newry City Centre Regeneration proposal. This was the first opportunity that the Newry community had to express their views on the merits of the proposal. While the consultation covered the main elements of the regeneration programme as presented in the Regeneration and Economic Development Strategy, it excluded the Albert Basin Park for which a separate consultation had been conducted 6 months earlier (see below).<sup>78</sup>

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<sup>75</sup> <https://www.newry.ie/news/20m-investment-for-new-civic-centre-and-theatre-in-newry-city-centre>

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[https://www.newrymournedown.org/media/uploads/nmd\\_regeneration\\_economic\\_development\\_strategy\\_2020-2025.pdf](https://www.newrymournedown.org/media/uploads/nmd_regeneration_economic_development_strategy_2020-2025.pdf)

<sup>77</sup> Interview with LC2

<sup>78</sup> [https://www.newrymournedown.org/media/uploads/nccr\\_public\\_consultation\\_-\\_frequently\\_asked\\_questions.pdf](https://www.newrymournedown.org/media/uploads/nccr_public_consultation_-_frequently_asked_questions.pdf)

The consultation received nearly 1,600 responses, including more than 6,000 open comments across the programme's several elements. The majority of consultees supported the proposed regeneration programme in principle. However, the consultation report noted important reservations and concerns, including a clear view among respondents that the Civic Centre was the lowest priority among the five elements proposed. In addition, the report noted that two issues dominated the consultation, namely (i) perceptions of the project's potential impact on parking at Newry Cathedral, and (ii) a strong view that the Albert Basin Park should be an integral part of the city centre regeneration project and given top priority. The report also highlighted the need for greater engagement, greater transparency and dialogue with key stakeholders going forward.<sup>79</sup>

The results of the consultation were later published, although only after being leaked online.<sup>80</sup> The council's response to the consultation was to establish a working group with a small number of invited stakeholders.<sup>81</sup> To date this has not resulted in any substantial changes to the original proposal, with the exception of the removal of plans to remove car parking from behind Newry Cathedral.<sup>82</sup> According to some of those interviewed for this report, the council attempted to frame this modification as evidence that the consultation had successfully informed the plan despite the fact that none of the other substantive issues raised during the consultation had been addressed in the revised Outline Business Case for the Newry City Centre Regeneration proposal.<sup>83</sup> At the time of

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<sup>79</sup> <https://newrychamber.com/wp-content/uploads/2022/01/NCCR-PUBLIC-CONSULTATION-REPORT.pdf>

<sup>80</sup> <https://www.newry.ie/news/newry-regeneration-consultation-findings-leaked-and-officially-published-all-within-an-hour>

<sup>81</sup> <https://drive.google.com/file/d/1mXY-otJtaYN0Jk4O2tX9f5JUvKOh6PPY/view>

<sup>82</sup> <https://drive.google.com/file/d/1gHQMUL7bWBEPNSdGP23JhplI3QuLRLld/view>

<sup>83</sup> Interview with LC2; Interview with CG2

writing, the proposal is reported to be going ahead and close to the formal pre-planning phase.<sup>84</sup>

### ***Albert Basin Park***

While the plans for Civic Centre were taking shape, there was growing public demand for a public park in the Albert Basin area of Newry. By 2017, a petition for the park, run by the campaign group Newry 2020, had attracted 11,500 signatures.<sup>85</sup> In response, a motion was unanimously passed by the Council in December 2017 to commit to the Albert Basin Park project. Since then, however, progress on moving the proposal forward has been slow. The Albert Basin Project Board, which, according to some interviewees was initially supposed to include community stakeholders, was eventually merged into the Project Board for the Newry City Centre Regeneration Project Board (see above), thus excluding campaign groups – including Newry 2020 - from discussions.<sup>86</sup>

The council ran a public consultation exercise on the Park from January to July 2020.<sup>87</sup> The results of the consultation confirmed the overwhelming support for the park. However, it is reported that leading questions had initially been introduced with a view to persuading the public to agree to social housing and commercial development on the site, even though this had never previously been part of the proposal. According to the Newry Reporter “there was an effort by council officers to include an option to use part of the Albert Basin site for

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<sup>84</sup> Interview with LC2;

<sup>85</sup> <https://www.belfastlive.co.uk/news/northern-ireland/newry-albert-basin-park-project-21859837>

<sup>86</sup> Interview with CG2; Interview with LC2

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[https://www.newrymournedown.org/media/uploads/albert\\_basin\\_15\\_acre\\_city\\_park\\_a\\_public\\_consultation\\_exercise\\_august\\_2020\(1\).pdf](https://www.newrymournedown.org/media/uploads/albert_basin_15_acre_city_park_a_public_consultation_exercise_august_2020(1).pdf)

housing, apartments, and commercial development. The move, it was understood, came out of the blue and had not been mentioned at a previous meeting in January and had not been sanctioned in advance by councillors.”<sup>88</sup> The questions were subsequently removed from the consultation before it was conducted.

In December 2021, Finance Minister Conor Murphy announced £16.2 million of funding allocated as part of the executive's draft Budget for 2022-25 to develop the Albert Basin Park.<sup>89</sup> While this was considered an important victory for the Newry 2020 group, it is estimated to be around half of the total necessary to deliver the project. Despite the shortfall, the Council did not seek extra funding from the UK Government’s Levelling Up Fund, which has drawn criticism for those who support the park.<sup>90</sup> The Albert Basin proposal has yet to enter the formal planning phase.

## Key issues with the consultation processes

Procedurally, the two consultations, in particular the Newry City Centre Regeneration public consultation, can be considered robust exercises by most standards. The latter, for example, included an initial set of stakeholder workshops to help inform the approach which should be taken to the wider public consultation exercise. This included identifying key issues and concerns and a subsequent online survey addressing each element of the proposed plan individually

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<sup>88</sup> <https://drive.google.com/file/d/1C77ewXIG5z8JUc97x51u8IP6aaqGpkTY/view?pli=1>

<sup>89</sup> <https://www.bbc.com/news/uk-northern-ireland-59651998>.

<sup>90</sup> [https://www.newry.ie/news/newry-misses-out-on-levelling-up-funding?fbclid=IwAR2j4yOFv4\\_0BXLGHW1krxeMlewuRjxm45clbQggGxOA8p-njKbV9zJCDas](https://www.newry.ie/news/newry-misses-out-on-levelling-up-funding?fbclid=IwAR2j4yOFv4_0BXLGHW1krxeMlewuRjxm45clbQggGxOA8p-njKbV9zJCDas)

through plain English and asking open rather than closed questions to facilitate comment.<sup>91</sup>

However, the quality of the exercises was undermined by the failure to consult with the community prior to key decisions being made and a lack of transparency around these decisions. This ultimately rendered the consultations meaningless with the results being largely ignored.

### **Failure to consult prior to making key decisions...**

The Newry Reporter reports that as far back as August 2016, consultants Deloitte made a presentation to councillors regarding the Newry City Centre Regeneration proposal recommending as a first step to undertake a public consultation/engagement exercise to ensure participation of the public and generate support. Yet this did not happen until four years later. In the meantime, more than £1 million of rate-payers money had been spent on the project.<sup>92</sup> As noted earlier, one of the inevitable consequences of consulting once proposals have been significantly developed and substantial funds invested is that developers are loathe to make substantial changes. In this context, it is to be expected that developers (in this case the Council itself) ultimately see public consultation as a risk to the project.

### **... and a lack of transparency in decision-making**

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<sup>91</sup> <https://newrychamber.com/wp-content/uploads/2022/01/NCCR-PUBLIC-CONSULTATION-REPORT.pdf>

<sup>92</sup> <https://drive.google.com/file/d/1Ml1G-x6wjDaz966rhEXWtaDJSwdFDgWZ/view>

As noted above, transparency and record-keeping within the formal planning process, although not without its flaws, is relatively strong. However, the Newry City Centre Regeneration case illustrates how transparency *before* applications enter the system is almost non-existent. This is critical as it is at this stage that key decisions are made.

While records of planning committee meetings are generally available, discussion related to Newry City Centre Regeneration and the Albert Basin typically happen at other council committee meetings, as they have not yet reached the planning stage. Even when the minutes<sup>93</sup> (and audio recordings<sup>94</sup>) of committee meetings where such matters are discussed are published, in practice these have proven to be of limited value given the large number of items which are deemed exempt (so-called “in-committee” discussions).<sup>95</sup>

In relation to the Newry City Centre Regeneration project and the Albert River Basin, for example, a number of recent committee discussions<sup>96</sup> (following the publication of the consultation report) were deemed to be exempt from publication on the grounds that they may reveal “information relating to the financial or business affairs of a particular person.”<sup>97</sup> Given that most discussions around any potential

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<sup>93</sup> <https://www.newrymournedown.org/meeting-minutes>

<sup>94</sup> <https://www.newrymournedown.org/meeting-audio>

<sup>95</sup> It should be noted that a decision to hold items in closed committee sessions requires the vote of only two councillors.

<sup>96</sup> See for example:

[https://www.newrymournedown.org/media/uploads/Strategy\\_Policy\\_and\\_Resources\\_Meeting\\_Agenda\\_16\\_06\\_2022\(1\).pdf](https://www.newrymournedown.org/media/uploads/Strategy_Policy_and_Resources_Meeting_Agenda_16_06_2022(1).pdf) - items 12 & 13 - BRCD and Complementary Fund and Civic Hub (page 4)

[https://www.newrymournedown.org/media/uploads/Strategy\\_Policy\\_and\\_Resources\\_Committee\\_Agenda\\_11\\_08\\_2022\(1\).pdf](https://www.newrymournedown.org/media/uploads/Strategy_Policy_and_Resources_Committee_Agenda_11_08_2022(1).pdf) - item 13 - Sean Hollywood Arts Centre (page 4)

[https://www.newrymournedown.org/media/uploads/Strategy\\_Policy\\_and\\_Resources\\_Agenda\\_14-10-2021.pdf](https://www.newrymournedown.org/media/uploads/Strategy_Policy_and_Resources_Agenda_14-10-2021.pdf) - items 8 and 10 - Belfast Region City Deal and Albert Basin (page 3)

<sup>97</sup> by virtue of para. 3 of Part 1 of Schedule 6 of the Local Government Act (Northern Ireland) 2014 – Information relating to the financial or business affairs of a particular

major or regionally significant developments are likely to involve private financial or business affairs of some description, this often cited exemption gives councils broad scope to withhold information on important discussions from the public.

A brief scan of recent Council Committee minutes in Newry Mourne and Down District Council reveals that this has become standard practice, with the majority of “in-committee” items coming under the same above-mentioned exemption within the Local Government Act. According to a recent media report, in the three months from March to May 2020, Newry Mourne and Down District Council held almost 100 items of debate behind closed doors, including the Newry City Centre Regeneration and Albert Basin projects, with one ex-councillor reporting an increase in the number of items of debate going into confidential sessions.<sup>98</sup>

While this case demonstrates the opacity of decision-making which can take place *before* an application enters the formal planning system, the following case illustrates that the challenge of ensuring the community’s voice is heard *after* an application enters the system can be just as, if not more, acute.

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person (including the Council holding that information) and the public may, by resolution, be excluded during this item of business

<sup>98</sup> <https://www.belfastlive.co.uk/news/northern-ireland/newry-mourne-down-council-slated-24301282>

## B. Development of the former Maghera High School site

### Timeline of key events

In mid-2018, Mid Ulster District Council submitted two applications to develop the Former Maghera High School as a business park.<sup>99</sup> According to the council, the site had been purchased with the intention to develop it as a business park given its proximity to a main road network.<sup>100</sup> As part of the application, the Council ran a Pre-Application Community Consultation (PACC), as required by law. The results of the PACC showed strong opposition to the proposal (23% in support and 76% opposed).<sup>101</sup> At the same time, there was strong community support for the site to be turned into a public park, with support for the alternative proposal led by the Maghera Park Action Group (MPAG).<sup>102</sup>

Despite receiving 1334 letters of objection, the Planning Officer's report recommended that the Mid Ulster District Council Planning Committee approve the proposal on the basis that it did not conflict with planning policies or other material considerations.<sup>103</sup> Minor amendments were made to the proposed design to make it "*more reflective of the environs on*

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<sup>99</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=6738ecbc-7953-4409-b839-fc63709509fd>

<sup>100</sup> Interview with PO1

<sup>101</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=8e53c74a-db0a-4da3-bded-06aa19e8167c>

<sup>102</sup> <https://ejni.net/campaigns/maghera-park-action/>

<sup>103</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=f1c51bb1-e416-4fe3-a0b0-baa5e35aa5a3>



*which the site sits*<sup>104</sup> (namely a reduction in the red line boundary of the site so that no development would be located within the flood plain) but no other substantive changes were made. According to a representative of Maghera Park Action Group, the council had initially included among the changes to the proposals the inclusion of a walkway around the proposed industrial unit and the saving of some trees. However, these changes were removed by the time the application was re-submitted in December 2018.<sup>105</sup> According to the Maghera Park Action Group, in the short time that was given to comment on the re-submitted application, a further 300 objections were raised, although the Planning Officer's report makes reference to only two further letters of objection to the proposed development.<sup>106</sup>

In 2019, the Maghera Park Action Group submitted a request to the Department for Infrastructure (DfI) to call-in the application on the grounds that it constituted a conflict of interest given that the Council was both proposing and deciding on the development. The application was eventually called-in by the Department for review in November 2020<sup>107</sup> and the consultation was ordered to be re-run.<sup>108</sup> Mid Ulster District Council submitted a new application for the proposed development in June 2021.<sup>109</sup>

Planning consultants JPE Planning conducted a second PACC from August 2021 to March 2022. The consultation report

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<sup>104</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=8e53c74a-db0a-4da3-bded-06aa19e8167c>

<sup>105</sup> Interview with CG1

<sup>106</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=f1c51bb1-e416-4fe3-a0b0-baa5e35aa5a3>

<sup>107</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=d5a32c79-d7d2-48bc-a7ad-77ae2d871fb4>

<sup>108</sup> Interview with PO1

<sup>109</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=c6f9af51-93fc-4e2c-b4f1-3310dc7575dc>

acknowledged the strong call for a new community park on this site but determined that it was beyond the scope of the current planning application.<sup>110</sup> Instead, it noted that the Council was acquiring adjacent lands (Mullagh Lands) for a new public parkland for which a separate community consultation process was being held.<sup>111</sup> The report also noted that the proposal had been amended to take account of the feedback received by reducing the plot sizes to retain a greater proportion of the existing woodland area, re-introducing the walkway and retaining some trees. At the time of writing, the application is still with the Department for Infrastructure (DfI) where it is currently under consideration.

The report on the separate consultation for Mullagh Lands was delivered to MUDC in July 2022 by Outdoor Recreation NI. However, according to one community representative, it has yet to be released despite several requests and is currently the subject of an FOI request<sup>112</sup>.

## Key issues with the consultation processes

Much as with the Newry Mourne and Down District Council consultations, the consultation exercises in Mid Ulster District Council were, procedurally at least, relatively well run. The 2021 PACC, for example exceeded the statutory minimum requirements as regards the methods used and ran for much longer than was required by law (August 2021 – March 2022).<sup>113</sup> Nevertheless, as with Newry Mourne and Down

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<sup>110</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=6b95282d-9de2-4b5c-a7e9-9ebe9586e8c2>

<sup>111</sup> <https://www.midulstercouncil.org/resident/parks.-play-open-spaces/parks-open-spaces/mullagh-road.-maghera-green-space-consultation>

<sup>112</sup> Interview with CG1

<sup>113</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=6b95282d-9de2-4b5c-a7e9-9ebe9586e8c2>

District Council, the scope of the consultation and the broader context in which these exercises took place meant that they have largely failed to give the community any meaningful voice in the use of land which has been used by the community for generations.

### **Failure to consult prior to making key decisions ...**

The purchase of the former Maghera High School grounds was first mentioned by Magherafelt District Council (prior to the merger of three council areas to form what is now Mid Ulster District Council) in a 2010 letter to the then Land and Property Services. According to the letter, the intention was to acquire the site to develop it solely for “recreational purposes”<sup>114</sup>. Minutes from council meetings in 2013 reveal that the intention of the proposed purchase subsequently changed to use for “economic development purposes”.<sup>115</sup> Yet the first the wider community became aware of any proposed development was with the neighbour notifications advising of the forthcoming applications in June 2018, once the formal process had begun. In contrast, the Economic Development Department within Mid Ulster District Council actively engaged in conversation with the business community regarding the site before progressing the plan to PACC stage.<sup>116</sup> As noted by a representative of the Maghera Park Action Group:

*“We have repeatedly argued that the planning process is not the arena in which to work through any difficulties in the repurposing of locally held community*

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<sup>114</sup> Letter submitted to the author by CG2

<sup>115</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=465a6b39-0acb-46e9-8399-c84a87280f70>

<sup>116</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=6b95282d-9de2-4b5c-a7e9-9ebe9586e8c2>

*land. By using the planning department, Mid Ulster District Council have effectively moved the community consultation process to the 'wrong end' of the local council decision making process.”<sup>117</sup>*

Moreover, according to the Maghera Park Action Group’s submission to the Department for Infrastructure (DfI) in September 2021, assertions by Mid Ulster District Council that the local community has been well consulted on the economic development of the site were misleading. While some community groups had been solicited for their opinions on the value of economic development in the area generally, the site itself was not identified in council literature until 2018.<sup>118</sup>

### **... leading to an endless cycle of consultation and re-consultation**

One of the consequences of failing to engage the community early in the process is the emergence of an adversarial atmosphere where communities and the council become locked in a cycle of objection and re-consultation once the formal planning process begins, which is a drain on time and resources for all involved. In such circumstances, many communities have no other options but to set themselves up in campaign groups.

In the case of the proposed business park, the Council has delivered at least four directly related consultations<sup>119</sup>, and

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<sup>117</sup> Interview with CG1

<sup>118</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=951eacc1-1766-4e60-a71b-865534026002>

<sup>119</sup> Community consultation on initial application – Summer, 2018; Community consultation on the amended application – Christmas/New Year, 2018/9; Tree

one consultation on an alternative site for the park<sup>120</sup> in what one community representative described as an “*exhausting, never-ending process*”.<sup>121</sup> Throughout this process new proposals were significantly changed with each new consultation while the inputs to previous consultations were overlooked. The Maghera Park Action Group’s response to the latter of these consultations, highlighted, for example, major variation to the proposal in the amended application which should have necessitated a fresh application (2018), failure to clearly identify the removal of all concessions made during the earlier consultation when re-consulting on the amended plans (2018), and the inclusion in the PACC materials of lands recently purchased by Mid Ulster District Council to compensate for the loss of the land envisaged in the business park proposal (2021) even though these were beyond the scope of the planning application itself, and hence not up for discussion.<sup>122</sup>

### **Failure to call-in the application despite a clear conflict of interest**

Perhaps the most glaring question of all with regards to the proposed business park is why the application was not called-in earlier by the Department for Infrastructure (Dfi) given that the Council itself had an interest in the development and given the high level of objection to the development from the date of the initial proposal. It was only when the Maghera Park Action Group, through the services of a legal firm and at considerable cost, referred the matter to the Department for Infrastructure (Dfi) in 2019, that the matter was definitively called-in.<sup>123</sup> A representative of Mid Ulster District Council’s

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consultation – March 2019 (TPO’s on High School trees); Re-run Community consultation – Summer 2021

<sup>120</sup> Mullagh Land consultation (Compensatory open space)

<sup>121</sup> Interview with CG1

<sup>122</sup> <https://epicdocs.planningni.gov.uk/ViewDocument.aspx?guid=8de305d2-1763-46e1-a82a-fdaa92269f00>

<sup>123</sup> Interview with CG1

planning department acknowledged that this was ultimately the right decision as it protects the council from any accusations of conflict of interest.<sup>124</sup>

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<sup>124</sup> Interview with PO1

# **CONCLUSIONS AND RECOMMENDATIONS**

This report has sought to provide an insight into the challenges of meaningfully engaging with Northern Ireland's planning system from the community perspective. It does not claim to present a definitive view, nor does it claim to represent the perspective of all communities or indeed all of those within a given community. Nevertheless, it does paint a clear picture of some of the key systemic weaknesses which permeate the system and explain how these have real world consequences which serve to disempower local communities and distance them from decisions which directly affect their lives.

It is important to acknowledge that the legal framework, regulations and policy guidance designed to support community engagement in Northern Ireland is relatively strong, if not perfect. This is underpinned by strong rhetoric espousing the principles of community led place shaping and co-creation. However, the reality of how the system operates in practice is far removed from this ideal.

Instead, what has emerged from this review is the picture of a system which is largely void of a shared identity or purpose either at the regional level or the local level. It is a litigious and technocratic system driven by economic interests, stacked in favour of developers and with little real oversight or accountability, that acts as a drain on energy, time and resources.

While the system may be adequate for rubber stamping the majority of non-controversial developments, it has proven wholly unable to cope when there is significant opposition from the community. Where such opposition has led to change, this has usually been because of external political intervention and has been achieved despite - rather than



thanks to - any engagement through the formal planning system.

The two case studies, although at different stages in the overall planning system, clearly demonstrate that community consultation, whatever form it takes, is ultimately meaningless if it happens at a time when decisions have already been made and time and money invested in a development. They also demonstrate a pervasive lack of transparency in decision-making which not only acts as a barrier for communities to meaningfully engage but also undermines public trust in the entire system.

Finally, we have seen how the local development planning process is seriously off track and overly technocratic. While the Public Accounts Committee's recommendations for "streamlining" the process are to be welcomed<sup>125</sup>, this should not come at the expense of more meaningful community engagement. The forthcoming Policies Plan stage is an important opportunity to re-evaluate the process to date and move towards more meaningful co-creation practices. While this will require patience and investment, it will save on both resources and energy in the long run.

## **RECOMMENDATIONS**

The following recommendations focus on practical steps that different stakeholders, in particular local councils and the Department for Infrastructure (DfI), can take to address some

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<sup>125</sup> <http://www.niassembly.gov.uk/globalassets/documents/committees/2017-2022/pac/reports/planning-in-ni/public-accounts-committee---planning-in-northern-ireland.pdf>

of the key weaknesses identified through this review. The recommendations suggest reforms at different stages of the planning system as well as cross-cutting reforms that can help strengthen accountability, transparency and capacity to engage, with a view to ensuring that communities can play a meaningful role in the system. **Annex 1** presents the recommendations in the form of a matrix, identifying which actors should take the lead in implementing each.

## System-wide

As noted, the planning system in Northern Ireland has evolved to prioritise efficiency and growth above community needs or environmental sustainability and is viewed by many stakeholders as overly legalistic, confrontational, and litigious. Meanwhile, the continued lack of transparency around political donations adds to the perception that the planning system is open to undue influence from powerful economic interests, undermining trust in the system. While it is beyond the scope of this report to propose a wholesale overhaul of the system, initial steps to address some of these systemic challenges include:

1. **prioritising the development of a more holistic monitoring framework for the planning system**, drawing on the experience from Wales and Scotland<sup>126</sup> in developing indicators which include some assessment of outcomes and the quality of community engagement at council level. Including more outcome-focussed metrics of success will ultimately help shift the balance of what is valued in the system;

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<sup>126</sup> <https://www.niauditoffice.gov.uk/files/niauditoffice/media-files/NIAO%20Report%20-%20Planning%20in%20NI.pdf>

2. **reviewing the thresholds for publication of political donations** to ensure greater transparency and trust in the planning system.

## Local development planning

The local development planning process is complex, drawn out and overly technical, making it inaccessible to most communities. Critically, Local Development Plans (LDPs) are not based on a co-created vision at the local level and are disconnected from other local place shaping activities, such as community planning. Recommendations to strengthen the local development planning process going forward include:

3. **assigning statutory weight to community priorities** in local decision-making processes as is the case, for example, in Scotland;<sup>127</sup>
4. **better aligning the local development planning process with the community planning process** and other local place shaping processes (e.g. regeneration);
5. **investing in communicating the relevance of planning** as part of the local development planning process.

## Pre-planning consultation

Pre-planning consultation is considered by many to be little more than a “tick-box” exercise which lacks proper oversight from councils. Communities are excluded from Pre-Application Discussions (PADs) which means that key decisions are made and plans substantially advanced before they can have a say.

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<sup>127</sup> Planning (Scotland) Act 2019  
<https://www.legislation.gov.uk/asp/2019/13/contents/enacted>

Meanwhile, Pre-Application Community Consultations (PACCs) are led by developers themselves which presents a clear conflict of interest, while councils' oversight role tends to be limited to ensuring that PACCs have been completed, rather than assessing the quality or outcomes of the engagement. This means that communities often have to raise the same issues again with the council once the application is submitted, which is a drain on resources and energy. Proposed actions to strengthen the consultation process include:

6. **introducing a requirement for community representatives to be involved in Pre-Application Discussions (PADs)** to help shape the formal consultation process and ensure early input into development proposals;
7. **introducing a requirement for independent, third-party facilitation of Pre-application Community Consultations (PACC)** to minimise potential conflicts of interest on the part of developers (whether private developers or councils themselves)
8. **enacting greater oversight over Pre-application Community Consultation (PACC) process**, including proper assessment of the *quality* of community engagement;
9. **ensuring greater clarity on the purpose of specific community engagement processes**, the nature of the information being sought, and the scope of influence in order to manage expectations;
10. **ensuring that all reports on consultations (whether PACCs or otherwise) provide a reasoned response** to feedback submitted explaining how comments have been considered and addressed in decision-making.

## Accountability

The planning system in Northern Ireland suffers from a lack of accountability and ineffective recourse mechanisms to challenge decisions. The lack of third party (or equal) right of appeal means that communities are left with little opportunity to challenge decisions other than via judicial review, which is expensive, time consuming and ineffective. There is also a lack of clear information on how objections to planning applications affect decision-making while the process for making representations is complex and skewed in favour of developers. Reforms which would help redress the balance and strengthen accountability to communities include:

11. **introducing third party/equal right of appeal** in the planning system;
12. **establishing an independent planning regulator** at the regional government level, with responsibility for oversight of the planning system and for handling complaints (including concerns raised *before* applications enter the system);
13. **establishing a dedicated planning and environmental court** that can navigate the complexity of the planning system and address substantive (and not just procedural) planning issues;
14. **publishing a clear reasoning for applications which are called in to the Department for Infrastructure (Dfi).**

## Transparency

While reactive transparency once planning applications have been submitted is generally good, transparency *prior* to decision-making is more limited and can present an important obstacle to community engagement. Council-level discussions

around large developments, for example, are typically withheld from public view (through so-called “in-committee” discussions), often on the grounds that they relate to the financial or business affairs of a particular person. In addition, there is no requirement for site notices and the range of those who are required to be notified is limited to those whose land directly adjoins a development site. Furthermore, it is not always clear why certain applications are called in. Urgent action is therefore needed to improve the transparency of the planning system (especially decision-making processes) at council level, including by:

15. **introducing a legal requirement for site notices and expanding the range for neighbour notifications** for all major or regionally significant development applications;
16. **publishing the full minutes (not just decisions) of all committee meetings** as standard and avoiding recourse to “in-committee” discussions unless under exceptional circumstances;
17. **publishing a full reasoning for all planning committee decisions** that go against planning officer recommendations;
18. **fully minuting all council-led consultative meetings with stakeholders** in relation to any proposed development;
19. **publishing relevant council documents in a timely manner** and in machine-readable format;
20. **ensuring that public documents requested under FOI are made available** with redactions kept to a minimum;
21. **automatically notifying objectors** when an application is up for decision by committee.

## Capacity

The apparent limited skills and experience on the part of many councillors when it comes to planning, combined with the fear of being held liable for unreasonable decisions has meant that capacity among councillors to conduct community engagement is weak. At the same time, engaging in the planning system requires a significant amount of investment in terms of time and expertise on the part of communities.

Recommendations to address these capacity gaps include:

22. **introducing capacity building for local councillors** on the value and mechanics of community engagement in local planning;
23. **ensuring that the Department for Infrastructure's (DfI) ongoing Planning Improvement Programme includes broad engagement** with community groups and councils and that it is sufficiently resourced to push through much needed reforms;
24. **developing, as a matter of course, more accessible planning consultation documents** in plain English;
25. **continuing to proactively advertise the Community Places planning advice service** as broadly as possible, including in council offices, on their websites and relevant publications as well as through forums and networking events;
26. **encouraging the use of demonstration projects** to explain the contribution of developments to the neighbourhood in order to increase understanding among all stakeholders.

# ANNEX 1: MATRIX OF RECOMMENDATIONS

What?		Who?		
		Department for Infrastructure	Councils (Councillors and planners)	Northern Ireland Executive/ Assembly
1	<p><b>prioritising the development of a more holistic monitoring framework for the planning system,</b> drawing on the experience from Wales and Scotland<sup>128</sup> in developing indicators which include some assessment of outcomes and the quality of community engagement at council level. Including more outcome-focussed metrics of success will ultimately help shift the balance of what is valued in the system;</p>	X		

<sup>128</sup> <https://www.niauditoffice.gov.uk/files/niauditoffice/media-files/NIAO%20Report%20-%20Planning%20in%20NI.pdf>



2	<b>reviewing the thresholds for publication of political donations</b> to ensure greater transparency and trust in the planning system.			X
3	<b>assigning statutory weight to community priorities</b> in local decision-making processes as is the case, for example, in Scotland; <sup>129</sup>			X
4	<b>better aligning the local development planning process with the community planning process</b> and other local place shaping processes (e.g. regeneration);	X	X	
5	<b>investing in communicating the relevance of planning</b> as part of the local development planning process.	X	X	
6	<b>introducing a requirement for community representatives to be involved in Pre-Application Discussions (PADs)</b> to	X	X	

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<sup>129</sup> Pla8nning (Scotland) Act 2019  
<https://www.legislation.gov.uk/asp/2019/13/contents/enacted>

	help shape the formal consultation process and ensure early input into development proposals;		
7	<b>introducing a requirement for independent, third-party facilitation of Pre-application Community Consultations (PACC)</b> to minimise potential conflicts of interest on the part of developers (whether private developers or councils themselves)	X	X
8	<b>enacting greater oversight over Pre-application Community Consultation (PACC) process</b> , including proper assessment of the <i>quality</i> of community engagement;	X	X
9	<b>ensuring greater clarity on the purpose of specific community engagement processes</b> , the nature of the information being sought, and the scope of influence in order to manage expectations;		X

10	ensuring that all reports on consultations (whether PACCs or otherwise) provide a reasoned response to feedback submitted explaining how comments have been considered and addressed in decision-making.		X	
11	introducing third party/equal right of appeal in the planning system;	X		X
12	establishing an independent planning regulator at the regional government level, with responsibility for oversight of the planning system and for handling complaints (including concerns raised <i>before</i> applications enter the system);			X
13	establishing a dedicated planning and environmental court that can navigate the complexity of the planning system and address substantive (and not just			X

	procedural) planning issues;			
14	<b>publishing a clear reasoning for applications which are called in to the Department for Infrastructure (Dfi).</b>	X		
15	<b>introducing a legal requirement for site notices and expanding the range for neighbour notifications</b> for all major or regionally significant development applications;	X	X	X
16	<b>publishing the full minutes (not just decisions) of all committee meetings</b> as standard and avoiding recourse to “in-committee” discussions unless under exceptional circumstances;		X	
17	<b>publishing a full reasoning for all planning committee decisions</b> that go against planning officer recommendations;		X	
18	<b>fully minuting all council-led consultative meetings with stakeholders</b> in		X	

	relation to any proposed development;			
19	<b>publishing relevant council documents in a timely manner</b> and in machine-readable format;		X	
20	<b>ensuring that public documents requested under FOI are made available</b> with redactions kept to a minimum;	X	X	
21	<b>automatically notifying objectors</b> when an application is up for decision by committee.		X	
22	<b>introducing capacity building for local councillors</b> on the value and mechanics of community engagement in local planning;		X	
23	<b>ensuring that the Department for Infrastructure's (Dfi) ongoing Planning Improvement Programme includes broad engagement</b> with community groups and councils and that it is sufficiently resourced to push through much needed reforms;	X		

24	developing, as a matter of course, more accessible planning consultation documents in plain English;		X	
25	continuing to proactively advertise the Community Places planning advice service as broadly as possible, including in council offices, on their websites and relevant publications as well as through forums and networking events;	X	X	
26	encouraging the use of demonstration projects to explain the contribution of developments to the neighbourhood in order to increase understanding among all stakeholders.	X	X	



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