

**DEVELOPMENT SCHEME**

**COMPREHENSIVE DEVELOPMENT AREA 136**

**VICTORIA SQUARE, BELFAST**

**INTERIM DECISION STATEMENT**

**DEPARTMENT FOR SOCIAL DEVELOPMENT**

**SEPTEMBER 2002**

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**1 INTRODUCTION**

1.1 The Department for Social Development (“DSD”) is empowered by Article 85 of the Planning (Northern Ireland) Order 1991 (“the Planning Order”) after consultation with the appropriate district council to prepare development schemes where it considers it expedient that an area should be developed, re-developed or improved as a whole. A development scheme defines, by reference to a map, the area of the scheme and indicates in general terms the manner in which it is intended that the area should be laid out and the land therein used.

1.2 In April 2001 DSD promoted a comprehensive development scheme (“the Development Scheme”) for Victoria Square Belfast. Consideration has been given to the report of the Planning Appeals Commission (“the Commission”) into inquiries under the provisions of Article 86(3) of the Planning (Northern Ireland) Order 1991 in the case of the Development Scheme and paragraph 3 of the Sixth Schedule to the Local Government Act (Northern Ireland) 1972 as amended by Article 87 and the Second

Schedule to the Planning (Northern Ireland) Order 1991 for the purposes of considering representations made in relation to a notice of intention to vest land in connection with the Development Scheme (“the Vesting Order”)

1.3 The Commission’s report responds to the report of the Commissioner (Mr T A Rue ) as the presiding Commissioner at the inquiries which opened on 22 January 2002 and concluded on 31 January 2002. DSD has carefully considered the Commissioner’s report and the Commission’s response in deciding whether or not it is expedient and in the public interest to adopt the Development Scheme and to make the Vesting Order. It has also taken account of the objections to the Development Scheme and Vesting Order. The Commissioner’s conclusions and the Commission’s report are reproduced as an Annex to this Statement which concludes that the Development Scheme should not be adopted and that the Vesting Order should not be made.

1.4 Consideration has also been given to questions that have been raised as to the lawfulness of DSD’s powers to decide whether or not to adopt the Development Scheme and make the Vesting Order in the context of the European Convention on Human Rights and the Human Rights Act 1998. DSD has no doubt that it has the necessary powers to do so and that it is under a duty to make such a decision in the context of the Planning (Northern Ireland) Order 1991. DSD has taken due account of the Executive’s commitment to promote equality of opportunity as

required by Section 75 of the Northern Ireland Act 1998 and new TSN objectives in relation to combating unemployment and increasing employability.

- 1.5 The essential nature of DSD's decision as to whether or not it is expedient to adopt the Development Scheme, with or without amendment, is that it involves an exercise of judgment by DSD having given due and proper consideration to both objections to it and the PAC Report.

## 2 **BACKGROUND**

- 2.1 The Belfast Regeneration Office (" BRO") was formed in September 1997 by means of an amalgamation of the Belfast Development Office and Making Belfast Work. The creation of the BRO signalled a significant change in the way that urban regeneration in Belfast was to be delivered, with the focus on an integrated approach to social, physical and economic regeneration. This involved moving away from a demand-led grant aid regime whereby the Department of the Environment ("DoE") was responding to applications for grant assistance on a project by project basis to a more strategic approach and a better focused targeting of resources, in particular in the case of physical development.
- 2.2 Subsequently on devolution DSD was created and the regeneration powers under the Planning Order were transferred to it by virtue of the Departments (Transfer and Assignment of

Functions) Order (Northern Ireland) 1999 (“the Transfer Order”). The BRO now forms part of DSD.

2.3 In the devolved administration it is the Programme for Government which sets out Government’s priorities for the future. In this Programme DSD commits to develop and in due course implement a comprehensive strategy for Belfast.

2.4 The selection of Victoria Square was the culmination of a careful and detailed analysis of four locations within the city centre which were being promoted for retail development by various property companies. It was generally agreed by the interested companies in the course of meetings in 1998 that it was extremely unlikely that the City Centre could support all the emerging proposals. DoE therefore took the initiative by undertaking a comprehensive assessment, assisted by independent consultants, of the locations put forward in order to establish which would be best, in overall regeneration terms, for Belfast. The promoters of the various locations all agreed to participate and were given an opportunity to comment on the proposed consultants’ brief and criteria and their views were carefully considered. The consultants’ brief referred to the fact that the DoE was required to make a choice as to which (if any) of these locations to support and asked the consultants to assess each of the proposals from a strategic urban regeneration point of view and to advise DoE in such a way as to help it to place the proposals in order of preference.

2.5 DOE appointed a consultancy team in March 1999 to carry out the assignment and to assess the proposed locations against 30 criteria. The principal public sector bodies and a number of special interest groups representing local traders and heritage and cultural interests were also consulted during the course of the assignment. The assignment was overseen by a Steering Group comprising officials from the BRO, Planning Service, Roads Service and Valuation & Lands Agency. The promoters of the various locations were given equal access to the DSD Minister and his advisers (DSD having assumed the relevant statutory powers from DOE following devolution). The Minister announced his decision in July 2000 to select Victoria Square as a location whose comprehensive development would have the greatest overall regeneration benefit for the City Centre, for the City and for the community of the region. Legal proceedings were taken against the decision to promote the Development Scheme in February 2001 but were dismissed by the Court in May 2001.

### 3 **THE RELATIONSHIP OF THE DEVELOPMENT SCHEME TO THE BELFAST URBAN AREA PLAN (“BUAP”)**

#### **The legal effect of development schemes and implications for the development plan**

3.1 Parliament has charged DSD with the statutory responsibility for securing the regeneration of Belfast and has given DSD the power to do this in the form of the development scheme procedure under

Article 85 and 86 of the Planning (Northern Ireland) Order 1991. The separation of functions and powers of DoE and DSD in relation to planning and regeneration was effected by the Transfer Order.

- 3.2 The legal effect of the development scheme procedure is to amend the development plan (Article 9 of the Planning Order). It shares this legal effect with Orders made under the New Towns Act (Northern Ireland) 1965 and Orders under Article 13 or 14 of the Roads (Northern Ireland) Order 1980 and Enterprise and Simplified Planning Zone schemes. All are capable of having a strategic or wider effect on a development plan.
- 3.3 DSD notes that the Commission is satisfied that DSD has sole power to prepare development schemes and agrees with the Commission's observations that development schemes do not have to be consistent in every respect with the existing statutory development plan which is currently the Belfast Urban Area Plan (BUAP) and may amend or supersede such site specific proposals relating to all or part of the scheme area. DSD does not agree with the Commission's view that the development scheme procedures provide an inappropriate statutory tool for the alteration of wider or strategic development plan proposals and policies applicable beyond the area of the Development Scheme.
- 3.4 As was noted by the Commission, in the case of a development scheme the area in which it effects the amendment of the

development plan is by reference to a map; but the Planning Order does not preclude changes which have implications for the development plan as a whole. The language of the Order is clear and unambiguous.

- 3.5 Accordingly, DSD does not accept the Commissioner's conclusion that the fact that the objectives of a development scheme could be achieved by an alteration to the development plan or through another statutory process operates as a constraint on the use of the development scheme powers.

**The effect of the Development Scheme on the strategic policies in the BUAP**

- 3.6 Whilst DSD accepts that the compatibility of the Development Scheme with the overall planning framework is a factor to be taken into account, it does not accept the Commission's judgment that such compatibility is a "highly significant consideration". DSD notes the Commission's assertion that DSD accepted this proposition in the judicial review application by Dunloe Ewart Plc. That is not so.

- 3.7 DSD notes that the Commission considers that as far as significant alterations to the Development Plan are concerned, this is the role of the appropriate authority exercising the carrying out of the functions set out in Article 3(2) and Part III (Development Plan) of the Planning Order, presently DoE. DSD considers that this raises two questions for it to address:

- 3.7.1 whether or not as a matter of law, it agrees with the Commission's view that where a development scheme gives rise to a significant alteration of a Development Plan, only DoE has power to effect such an alteration; and
- 3.7.2 the extent to which the Development Scheme would itself constitute a significant alteration to the Development Plan.
- 3.8 The terms of Part VII of the Planning Order do not involve any limit on DSD's powers to promote development schemes which it considers are expedient. It is DSD's view that a development scheme is not required by law (or by policy) to be consistent with the BUAP, because the lawful effect of a development scheme is to amend the BUAP.
- 3.9 DSD does not accept, in any event, that the effect of the adoption of the Development Scheme would give rise to a significant alteration of the development plan. Whilst the BUAP contains the designation of a Main Shopping Area ("MSA") around Donegal Place and Royal Avenue and seeks to focus major new retail development within that area, the provisions of policy S1 allow for exceptions, provided at least one of two specified criteria is met. That is all the policy requires. DSD is satisfied that both criteria are met in relation to Victoria Square.
- 3.10 The principal effect of the Development Scheme is to extend the

MSA further south so as to apply policy S1 of the BUAP to a wider area. That policy would continue to operate throughout the MSA as extended and, far from reversing or weakening the thrust of the development plan policy, the Development Scheme itself depends upon it. It would not, in DSD's judgment, create an incoherent policy for retail development.

3.11 Moreover, in DSD's judgment:

3.11.1 there are clear benefits to be derived from expanding the MSA boundary to enable Belfast to compete more effectively with out-of-centre facilities and with other cities of a comparable size and enhance its regional role; and

3.11.2 the extent to which the Victoria Square site physically extends beyond the MSA is of no material significance in terms of the wider retail and regeneration planning policy aims. DSD considers that the boundary appears to have been arbitrarily drawn in this location as evidenced by the exclusion of the Victoria Centre.

3.12 DSD, therefore, takes a different view from the Commission in relation to this issue.

### **The focus of prime retail development**

3.13 DSD has considered the Commission's and the Commissioner's observation that the creation of prime retail development beyond

the south-eastern limit of the MSA will detract from the primary retail activity which currently exists in the north of the MSA. In DSD's judgment the key benefit of providing a sufficient concentration of retail development at Victoria Square is to establish a new retail destination to counterbalance Castle Court, thus creating a larger and better integrated centre with strong attractions at either end. DSD considers that this arrangement will lead to increased attraction and enhanced circulation of shoppers throughout the City Centre with regeneration benefits along connecting streets and throughout the City Centre as a whole.

- 3.14 In DSD's judgment the Development Scheme would not cause harm to the retail role or function of the rest of the MSA, but would bolster the role of the whole retail sector, thus enhancing the regional role of the city centre consistent with the objectives of the BUAP, PPS 5 and the Regional Development Strategy ("RDS").

#### 4 **ALTERNATIVE PROCEDURES**

- 4.1 DSD notes the observations of the Commission concerning the 1999 Drivers Jonas report. The specific reference in the Drivers Jonas report to the retail strategy and planning brief was made prior to the selection of Victoria Square and prior to any consideration of the procedural routes available to DSD. Whilst DSD accepts that other procedures could have been utilised as an

alternative to the development scheme procedure with a view to achieving the same objects, DSD does not consider that it is correct to conclude that the use of the Development Scheme procedure is for that reason unlawful or inappropriate.

4.2 DSD's view remains that the chosen route of utilising the development scheme procedure is appropriate in this instance.

4.3 Furthermore, as has already been stated, DSD rejects the Commissioner's conclusion that the Development Scheme would undermine the existing shopping strategy of the BUAP. For the reasons set out in paragraphs 3.10 to 3.12 above DSD considers that the Development Scheme would build upon, and is consistent with, the key policy objectives of the BUAP.

## 5 **COMMERCIAL AND FINANCIAL CONSIDERATIONS**

5.1 DSD notes the Commission's concerns regarding its arrangements with Multi Development Corporation ("MDC"). However having considered these, DSD is satisfied that the process leading up to the selection of Victoria Square, the promotion of the Development Scheme and the arrangements with MDC have at all times been open, fair and transparent. The Development Scheme has been promoted for the good of the public, and the City Centre and the City as a whole and not for the financial benefit of a particular Government Department, section of the community or private concern.

- 5.2 The Commission's comments in relation to the letter of intent with MDC have been considered. There appears to be a misunderstanding on the part of the Commission as to the purpose, effect and meaning of the letter of intent. DSD is not a developer but a Government Department charged with a statutory regeneration function. If its regeneration objectives for Victoria Square, and thus for regeneration in Belfast City Centre, are to be achieved, partnership with the private sector is considered by DSD to be vital. This was recognised by all parties who participated in the selection process (see paragraph 2.4 above). The letter of intent established the necessary preliminary and qualified partnership between DSD and the private sector within the constraints imposed by the Planning Order and stated that it did not create any binding agreement between DSD and MDC or impose any fetter on the lawful and proper exercise of DSD's statutory functions.
- 5.3 The Commission noted that the letter of intent required DSD to object to any planning application which might undermine the objectives of the Development Scheme and concluded that this was anti-competitive.
- 5.4 As is noted in paragraphs 2.4 and 2.5 above, DSD was required to make a choice of which (if any) of the competing locations to support. That imperative was accepted by those parties associated with each location. DSD does not consider it unlawful or inappropriate for it to object to any planning application which in

its judgment conflicts with its regeneration objectives for Victoria Square and thus for Belfast City Centre. It is inevitably a matter for the Planning Service, who have a statutory responsibility for determining planning applications in Northern Ireland, to consider those representations alongside other material considerations in a development control context. It cannot reasonably be suggested (as the Commission appears to have implied) that there is any bar upon one Government Department, consistently with its own role and responsibilities, expressing its views to another when that other Department is exercising its statutory functions.

## 6 **ALTERNATIVE LOCATIONS**

- 6.1 DSD has considered the Commission's conclusion that there are other alternative locations available to meet the demand for retail space within the City Centre which are either wholly or more consistent with the shopping strategy and policies in the BUAP. DSD does not agree with that conclusion. Section 2 of this Statement sets out the background leading to the selection of Victoria Square. The assessment of Victoria Square and the other suggested sites was based on detailed and extensive criteria agreed with all promoters of the competing locations, including the ability of each location to contribute to the overall physical, economic and social regeneration of Belfast. The selection process and the breadth of factors taken into account by DSD (including compliance with the regional and local planning policies) which informed the decision to select Victoria Square

are considered to be relevant, but do not appear to have been considered by the Commission.

6.2 DSD remain of the view that Victoria Square is the most appropriate location in which to promote comprehensive development by means of the Development Scheme in furtherance of its duty to deliver regeneration. Victoria Square was selected because it offered the best regeneration potential of all the locations considered. DSD's task is to promote development which it considers will be conducive to overall regeneration of the City and the City Centre even if other locations may have some planning, commercial or other factors weighing in favour of their redevelopment.

## 7 **THE BELFAST METROPOLITAN AREA PLAN (“BMAP”)**

7.1 DSD notes that the Commission considers that the adoption of the Development Scheme in advance of the BMAP, due to be published in draft in March 2003 “... *would prejudice proper consideration of the various alternative ways of meeting the retail demand needs of the City Centre*”. This runs counter to the view expressed by DoE who do not consider that the Development Scheme is premature. DSD agrees with DoE on this point for the following reasons.

7.1.1 Paragraph 46 of PPS1 clearly applies to planning applications. It does not apply to development schemes, which are not part of the development

control process. Even if the guidance in PPS1 were applicable, the advice in paragraph 47 must also be considered in its entirety. The guidance makes it clear that a refusal of a planning application on prematurity grounds may be justified where the emerging plan is at a “... *preliminary proposals stage*”. Even in these circumstances, it would seldom be justified to refuse on prematurity grounds “...*because of the lengthy delay which this would impose in determining the future use of the land in question.*” Nevertheless DSD has considered whether there is any force in the “preaturity” objection which some objectors have pursued.

7.1.2 As is noted by the Commission, BMAP will not be published in draft form until March 2003. In DSD’s judgment, BMAP cannot be considered to have reached a preliminary proposals stage to which paragraphs 46 and 47 would apply.

7.1.3 The essence of Article 85 powers is to provide a mechanism which can ensure a relatively quick and flexible response to private sector initiatives which will facilitate redevelopment and regeneration.

## 8 **REGENERATION ISSUES**

8.1 DSD notes that the Commission acknowledges that the BUAP,

the Vision document, PPS 5 and the RDS are all supportive of the objective of enhancing the City Centre's regional role. The Commissioner also acknowledged that it is desirable that new shopping facilities become available in the City Centre and that there are existing qualitative deficiencies. However, the Commission suggests that *“these are commercial challenges to which one would normally expect private enterprise to respond without the need for direct Government involvement”*.

- 8.2 DSD takes a different view. It considers that development of the type and scale required, if worthwhile regeneration in the City Centre is to be accomplished, cannot reasonably be expected to come forward in a timely and coherent fashion without direct Government involvement. DSD considers that the need for public sector intervention and assistance was common to Victoria Square and the other potential locations it considered prior to the selection of Victoria Square. Indeed, it was this factor which precipitated approaches to DSD by the promoters of all the various alternative locations at the outset.
- 8.3 DSD remains of the view that proposals which are ad hoc, incremental or uncoordinated will not ensure the delivery of DSD's regeneration objectives or the enhancement of the vitality and viability of Belfast as a regional centre.
- 8.4 Even if Victoria Square is not the area most in need of regeneration in the City Centre, DSD considers that it is the area

whose redevelopment, as envisaged in the Development Scheme, is essential to achieve a significant advance in the physical, social and economic regeneration of the City Centre as a whole.

8.5 Whilst DSD acknowledges that parts of Victoria Square show signs of vitality and viability, it does not follow that there is no need for regeneration in this part of the City Centre. DSD considers that such a need exists. The area is not performing an appropriate role in the City Centre.

8.6 DSD notes the Commissioner's observation that Victoria Square is in an area where private sector investment may be expected to occur in any event. DSD does not agree with the conclusion that spontaneous private sector investment would deliver the comprehensive development of Victoria Square which is necessary to meet the regeneration objectives for the City Centre as a whole. Piecemeal development with individual owners developing small scale proposals is not considered by DSD to be likely to bring forward comprehensive development within the timescale in which the overall regeneration of Belfast as a whole must be stimulated, if at all.

8.7 DSD acknowledges the Commission's opinion that Victoria Square may well not be the most derelict part of the City Centre and in itself the most in need of regeneration. However, it is DSD's judgment that this location would generate the maximum benefits for Belfast as a whole. There is nothing in the

Commissioner's report sufficient to dissuade it from that fundamental conclusion.

### **Laganside**

- 8.8 DSD notes the Commissioner's rejection of the importance that DSD attaches to improved linkages between Laganside and the City Centre. Whilst DSD acknowledges that there are impediments to the creation of the link, these are not regarded by DSD as being insurmountable, given the likely timescale associated with the development of Victoria Square. Equally, they do not detract from the clear objective of the Laganside Corporation, expressed in particular in "A Strategy for Laganside Linkages", to promote better linkage with the City Centre and the fact that the BUAP strongly supports linkages between the City Centre and Laganside.
- 8.9 Whilst DSD accepted that the linkage is not necessarily dependent upon retail development alone, such development, as part of an overall mix of uses, is considered likely to assist in achieving the objective of integration. The widening of the regeneration benefits of the Scheme beyond the boundary of the site is an important consideration for DSD.
- 8.10 For the reasons set out in this section, DSD does not accept the view expressed by the Commissioner that the net effect of the Development Scheme would be negative in relation to regeneration in the City Centre.

## 9 **IMPACT ON THE BUILT ENVIRONMENT**

- 9.1 DSD notes the opinion of the Commission that the location of the City Centre conservation area is a “critically significant factor” in assessing the impact of the Development Scheme on the built environment and their concern that the requirement of Article 50(5) of the Planning Order was not drawn to the attention of the Minister in explicit terms at the time of selecting Victoria Square.
- 9.2 DSD considers that the Article 50(5) duty is not discharged by reference to any individual document, moment or action in the overall process but by reference to the process as a whole. The act of preparing and publishing the Development Scheme (as opposed to intending to prepare and publish it), considering objections both before and at the Public Inquiry and the present decision all form part of that process and go towards the discharge of the duty imposed by Article 50(5). DSD considers that having regard to these factors in relation to the Development Scheme, including the extent of evidence submitted to the Public Inquiry, the duty imposed by Article 50(5) has been discharged. DSD, therefore, considers that the fact that the duty was not specifically brought to the Minister’s attention in February and June 2000 does not vitiate the decision which has to be made now on whether the Development Scheme should be adopted.
- 9.3 Article 50(5) and policy BH12 of PPS6 both require that in formulating development proposals proper regard must be had to

the preservation and enhancement of the character and appearance of the conservation area. These requirements apply at the development control stage and the Development Scheme does nothing to undermine the relevant statutory and policy tests – indeed in DSD’s view it strengthens them.

9.4 Article 86(3) empowers DSD to amend a development scheme. In the interests of clarity DSD propose to effect an amendment to Section 3 of the Development Scheme by making express reference to Article 50(5) and PPS6. Whilst any application for planning permission on Victoria Square would already be subject to those requirements, the amendment would direct an applicant to the Article 50(5) duty when he reads the Development Scheme and the guidance in PPS6. DSD considers that the proposed amendments will generally strengthen the Development Scheme in its treatment of built heritage issues.

9.5 DSD notes that the Commission considers that the Development Scheme pays scant regard to the built heritage, particularly in the context of the part of the Development Scheme area lying within the conservation area. Furthermore, the Commission concluded that there had been no assessment of the character and appearance of the area or its importance within the context of the Belfast conservation area as a whole.

9.6 DSD does not accept that analysis. It was recognised by the Commission that the Development Scheme made reference to the

special attention that is to be paid to the desirability of preserving or enhancing the character and appearance of a conservation area. DSD proposes to amend the Development Scheme so that this direction is brought to the reader's attention in Section 3. DSD considers that this would provide a sufficient recognition of the built heritage issues since the Development Scheme does not, nor can it, circumvent the statutory tests and requirements which apply to any planning application affecting a listed building or land or buildings included in the conservation area.

9.7 DSD notes that the Commission does not contend that there is any inconsistency between the Development Scheme and the heritage and conservation area policies in the BUAP. From a conservation and heritage perspective, any planning application for the development of Victoria Square must satisfy the relevant heritage policies in the BUAP, the requirements of Article 50(5) and guidance in PPS6 before planning permission, listed building consent or conservation area consent can be granted.

9.8 In this context DSD considers that the Commission's comments concerning the witness provided by Environment and Heritage Service to be both unfortunate and unjustified.

## 10 **VESTING ORDER**

10.1 It is not proposed at this stage to consider the Commissioner's comments on the Vesting Order at least until a further period of consultation has occurred on DSD's intention to adopt the

Development Scheme.

11 **CONCLUSION**

11.1 For all the reasons set out in this statement, DSD is now minded to adopt the Development Scheme with amendments. Before taking a final decision the Department is seeking and will consider any views received in writing from interested parties within 28 days from the date of issue of this Interim Decision Statement.

**SEPTEMBER 2002**