

Better Planning Coalition & Royal Town Planning Institute

Briefing for Consideration of Amendments of the Levelling Up and Regeneration Bill

Below is a briefing prepared by the Better Planning Coalition (BPC) and Royal Town Planning Institute (RTPI) on the Levelling Up and Regeneration Bill ahead of the Commons Consideration of Lords' Amendments.

We're asking MPs to vote in favour of Clause 95 of the Bill, as amended in the House of Lords, to maintain public engagement with planning policies applied in their area and ensure parliamentary oversight of national planning policy now directed by the Secretary of State.

This briefing explains what impact the original Clause 95 would have, why amendments have been necessary, why parliamentarians should vote in favour of the amended clause and what difference it would make in local areas. The full clause is set out on page 4.

What impact would the original Clause 95 have?

As originally drafted, national development management policies (NDMPs) **came with no minimum public consultation or opportunities for parliamentary scrutiny**. These policies have the potential to significantly affect decision-making about development in England's planning system, and as such it is essential that there are legal safeguards to ensure public consultation and parliamentary scrutiny. Minister's assurances about their intentions have been welcome, but offer no guarantee over how future governments will behave, and cannot safeguard the right of the public and parliament to have a say in local planning policy that will affect every community. Legal changes in the Bill, as set out in Clause 95 as amended by the Lords, will ensure that the public have the opportunity to feed in and that Parliament is the final decision maker.

Such an approach has been given support by Peers and is also a **recommendation of the Levelling Up, Housing and Communities Committee** in their Seventh Report of Session 2022-23 'Reforms to National Planning Policy' (July 2023).

The amended Clause 95 of the draft Bill would guarantee the level of scrutiny that these policies are subject to by ensuring the following:

- Full parliamentary scrutiny over the designation and review of National Development Management Policies, based on processes already in use and set out in the Planning Act 2008 (as amended) for designating infrastructural National Policy Statements.
- Minimum standards of public consultation for the designation and review of National Development Management Policies to ensure that community engagement with planning policy decisions that apply in their areas is maintained as in local plans and that the new system retains democratic legitimacy

We believe accepting these changes to the Bill will serve to improve both the quality of NDMPs in the long term while ensuring that current opportunities for public consultation and scrutiny are not lost from the planning system.

Why were amendments necessary?

Part 3, Chapter 2 of the Bill concerns “Development Plans” and would:

- Introduce National Development Management Policies (NDMPs) as part of the statutory decision-making process in England (Clause 94, subsection (2) (5B));
- Require that NDMPs are given primacy in decision making where there is a conflict with local Development Plan policies (Clause 94, subsection (2) (5C)); and
- Secure parliamentary scrutiny and public consultation as part of the designation and review of NDMPs (Clause 95 as set out above).

New National Development Management Policies could help councils to focus local plans on policies that reflect their unique strategic and economic needs and challenges and provide businesses with greater consistency when meeting planning policy requirements across the country. They would hold greater weight than the same policies currently outlined in the National Planning Policy Framework (NPPF).

Local authorities are rightly required to consult on these planning policies when preparing local plans today. In future **it is right that Secretaries of State be held to account by the public and parliament** in a similar way.

The Commons Select Committee and Peers shared our concerns about the degree of centralisation NDMPs represent due to the degree of discretion afforded to the Secretary of State to determine and apply planning policy nationally and therefore, they supported the introduction of Clause 95. The rejection of Clause 95 risks introducing significant changes to planning policy at a local level with limited community involvement and therefore greater political and legal risk.

The clause now gives greater reassurance around the issue of local democracy and engagement with the planning system, using an existing established approach (National Policy Statements under the Planning Act 2008). The case for explicit parliamentary and public scrutiny is also supported by research conducted by the University of Liverpool and ARUP, published by the RTPI, which considers the application of national planning policies in other planning jurisdictions. Comparisons with other countries and nations suggests that:

- Extensive public consultation has been critical to the success of similar policies in other jurisdictions. In Scotland planning experts have considered this to establish legitimacy for the new regime and suggested this has improved the usability of NPF4. In Wales a clear statement of public participation has enabled a system “characterised by relative ‘stability’”.
- Political/Parliamentary scrutiny is a common feature of the most successful national policy regimes, e.g. in Germany, the Netherlands and Wales. Where absent (as in the Republic of Ireland) central government’s authority and status on planning policy and guidance has been less certain.

The full findings have been summarised in this accompanying briefing:

<https://www.rtpi.org.uk/media/15278/ndmp-research-briefing-july-2023-final.pdf>

We recognise this needs to be done in an effective and appropriate way to ensure the planning system can continue to respond to 21st century challenges. We firmly believe this amended clause provides the flexibility to deliver a proportional approach to consultation and engagement without compromising the significant benefits intended by the Government.

Why parliamentarians should vote in favour of Clause 95 as amended by the Lords?

We are concerned that the executive powers the Government proposed for the Secretary of State, would enable them to make substantial changes to national planning policy that will have a significant impact at a local level. This is a significant shift towards centralisation of planning and these powers are significantly broader and more permissive than those Ministers have in connection with other areas of planning - notably National Policy Statements. We're therefore **asking MPs to protect the right of the public and parliament to have a say in planning policy** and support the new Clause 95 as currently drafted in the Bill.

At Committee, responding to the BPC/RTPI's proposals, the Minister said "*National policy statements are used to set out the policy for nationally significant infrastructure projects—planning decisions that are made by Ministers. National development management policies will serve a broader purpose than this and will sit alongside policies in locally produced plans when local decision-makers consider the suitability of development proposals... Clause 87 [now clause 95] already imposes an obligation on the Secretary of State to ensure that consultation and participation take place as appropriate, and our recent consultation on the future of the NPPF and the NDMP confirms that public consultation will be carried out before they are designated.*" **The BPC/RTPI does not believe the Minister's response adequately addresses our concerns** for the following reasons:

- **Weaker requirements for public consultation (previously deemed "as appropriate" to the Secretary of State) undermine the Government's commitment to give communities more say in our planning system.** Local decision-makers will be required to consider NDMPs in planning applications without requirements for the Secretary of State to take their views into account when developing them.
- **Secretary of State decisions about major infrastructure will be scrutinised differently to planning decisions for other public goods** like homes, commercial and environmental provisions. NDMPs will be used in the same way National Policy Statements for infrastructure are (i.e. forming the basis for Minister's called-in decision-making) but will not be subject to the same parliament scrutiny.
- **Cookie cutter planning policies applied indiscriminately to development across England could stifle local area's ambition, innovation and democratic efforts** to seek higher affordable housing requirements (as in Reading), higher renewable energy requirements (across councils who've adopted the Merton Rule) or higher biodiversity net gain requirements (in Guildford or Richmond). Safeguards are needed to ensure national planning policies create a floor, not a ceiling, for standards or slow innovation to the pace of the slowest areas.
- **NDMPs introduced too quickly or without proper consultation and notice could create significant uncertainty for developers and councils and new barriers to housing delivery.** Planning policies should be reviewed and updated regularly but safeguards are needed to ensure the stability applicants and communities need to progress with projects and plans.
- **As originally drafted, Clause 95 would remove existing standards for community engagement on planning policy as the norm, rather than the exception.** There is a reasonable case for reducing scrutiny during novel situations (like the pandemic), national crises or emergencies but not in normal times.

In future, the unlimited nature of NDMPs has been interpreted by some commentators as a first step towards more radical reform. The Centre for Cities have suggested that "NDMPs give a glimpse

of how a future ‘flexible zoning’ system would work”. Parliament therefore has good reason to seek stronger reassurances about how new policy will change under this new planning policy regime.

The local impacts of reversing the Lords amendment to Clause 95

Development Management Policies considered in planning typically enable local planning authorities to appropriately assess development in light of both national policy/priorities and the area’s unique assets or risks, infrastructure, economic and policy/devolution context and local strategies.

Some planning policies currently included in Local Development Plans respond to planning considerations that are standardised across the country like: national regulations (e.g. Listed Building or Conservative Areas); universal principles (e.g. health and safety protections); fixed land use constraints e.g. Green Belt, SSSI, AONB); or are technical (e.g. for EV charging) or generic (e.g. standard text on acceptable design and amenity). These can reasonably be compiled at a national level.

However, many of the planning policies currently included in Local Development Plans necessarily interpret development management requirements in place-specific ways. Without appropriate local consideration a blanket national policy could encourage planning decisions that communities would reasonably expect to determine locally. For example, single NDMPs – applied without further local interpretation – could:

- Disproportionately impact the economic viability of developments in weaker economic areas – raising costs that could be absorbed more easily in areas with higher house prices;
- Weaken local controls to ensure that development reflect the area’s unique needs, e.g. over affordable housing and other policies related to type, size, tenure mix, accessibility and accommodation for specific groups;
Constrain policy controls on specific town and retail centre development;
- Weaken protections and local stewardship of unique heritage, biodiversity and green space assets.

Clause 95 as amended by the House of Lords – National development management policies: meaning

“After section 38 of PCPA 2004 insert—

“38ZA Meaning of “national development management policy”

(1) A “national development management policy” is a policy (however expressed) of the Secretary of State in relation to the development or use of land in England, or any part of England, which the Secretary of State by direction designates as a national development management policy.

(2) Before designating a policy as a national development management policy for the purposes of this Act the Secretary of State must carry out an appraisal of the sustainability of that policy.

(3) A policy may be designated as a national development management policy for the purposes of this Act only if the consultation and publicity requirements set out in clause 38ZB, and the parliamentary requirements set out in clause 38ZC, have been complied with in relation to it, and—

- (a) the consideration period for the policy has expired without the House of Commons resolving during that period that the statement should not be proceeded with, or

(b) the policy has been approved by resolution of the House of Commons—

- (i) after being laid before Parliament under section 38ZC, and
- (ii) before the end of the consideration period.

(4) In subsection (3) “the consideration period”, in relation to a policy, means the period of 21 sitting days beginning with the first sitting day after the day on which the statement is laid before Parliament under section 38ZC, and here “sitting day” means a day on which the House of Commons sits.

(5) A policy may not be designated a national development management policy unless—

- (a) it contains explanations of the reasons for the policy, and
- (b) in particular, includes an explanation of how the policy set out takes account of Government policy relating to the mitigation of, and adaptation to, climate change.

(6) The Secretary of State must arrange for the publication of a national policy statement.

38ZB Consultation and publicity

(1) This section sets out the consultation and publicity requirements referred to in sections 38ZA(3) and 38ZD(7).

(2) The Secretary of State must carry out such consultation, and arrange for such publicity, as the Secretary of State thinks appropriate in relation to the proposal. This is subject to subsections (4) and (5).

(3) In this section “the proposal” means—

- (a) the policy that the Secretary of State proposes to designate as a national development management policy for the purposes of this Act or
- (b) (as the case may be) the proposed amendment (see section 38ZD).

(4) The Secretary of State must consult such persons, and such descriptions of persons, as may be prescribed.

(5) If the policy set out in the proposal identifies one or more locations as suitable (or potentially suitable) for a specified description of development, the Secretary of State must ensure that appropriate steps are taken to publicise the proposal.

(6) The Secretary of State must have regard to the responses to the consultation and publicity in deciding whether to proceed with the proposal.

38ZC Parliamentary requirements

(1) This section sets out the parliamentary requirements referred to in sections 38ZA(3) and 38ZD(7).

(2) The Secretary of State must lay the proposal before Parliament.

(3) In this section “the proposal” means—

- (a) the policy that the Secretary of State proposes to designate as a national development management policy for the purposes of this Act or
- (b) (as the case may be) the proposed amendment (see section 38ZD).

(4) Subsection (5) applies if, during the relevant period—

- (a) either House of Parliament makes a resolution with regard to the proposal, or
- (b) a committee of either House of Parliament makes recommendations with regard to the proposal.

(5) The Secretary of State must lay before Parliament a statement setting out the Secretary of State's response to the resolution or recommendations.

(6) The relevant period is the period specified by the Secretary of State in relation to the proposal.

(7) The Secretary of State must specify the relevant period in relation to the proposal on or before the day on which the proposal is laid before Parliament under subsection (2).

(8) After the end of the relevant period, but not before the Secretary of State complies with subsection (5) if it applies, the Secretary of State must lay the proposal before Parliament.

38ZD Review of national development management policies

(1) The Secretary of State must review a national development management policy whenever the Secretary of State thinks it appropriate to do so.

(2) A review may relate to all or part of a national development management policy.

(3) In deciding when to review a national development management policy the Secretary of State must consider whether—

- (a) since the time when the policy was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,

- (b) the change was not anticipated at that time, and

- (c) if the change had been anticipated at that time, any of the policy set out would have been materially different.

(4) In deciding when to review part of a national development management policy (“the relevant part”) the Secretary of State must consider whether—

- (a) since the time when the relevant part was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the relevant part was decided,

- (b) the change was not anticipated at that time, and

- (c) if the change had been anticipated at that time, any of the policy set out in the relevant part would have been materially different.

(5) After completing a review of all or part of a national development management policy the Secretary of State must do one of the following—

- (a) amend the policy;

- (b) withdraw the policy's designation as a national development management policy;

- (c) leave the policy as it is.

(6) Before amending a national development management policy the Secretary of State must carry out an appraisal of the sustainability of the policy set out in the proposed amendment.

(7) The Secretary of State may amend a national development management policy only if the consultation and publicity requirements set out in section 38ZB, and the parliamentary requirements set out in section 38ZC, have been complied with in relation to the proposed amendment, and—

(a) the consideration period for the amendment has expired without the House of Commons resolving during that period that the amendment should not be proceeded with, or

(b) the amendment has been approved by resolution of the House of Commons—

(i) after being laid before Parliament under section 38ZA, and

(ii) before the end of the consideration period.

(8) In subsection (7) “the consideration period”, in relation to an amendment, means the period of 21 sitting days beginning with the first sitting day after the day on which the amendment is laid before Parliament, and here “sitting day” means a day on which the House of Commons sits.

(9) If the Secretary of State amends a national development management policy, the Secretary of State must—

(a) arrange for the amendment, or the policy as amended, to be published, and

(b) lay the amendment, or the policy as amended, before Parliament.”

About The Better Planning Coalition

The Better Planning Coalition represents 34 organisations across the environment, housing, planning, heritage and transport sectors with one common goal: a planning system fit for climate, nature and people.

This broad range of organisations formed the Better Planning Coalition to campaign for the biggest upgrade to planning rules for at least a generation and are working together to influence the Levelling Up and Regeneration Bill and the ongoing review of the National Planning Policy Framework (NPPF).



About the Royal Town Planning Institute

The Royal Town Planning Institute (RTPI) champions the power of planning to create sustainable, prosperous places and vibrant communities. As a professional body, the RTPI has over 27,000 members across the public and private sector and is responsible for setting formal standards for planning practice and education. As a learned society, the RTPI uses its expertise and research to bring evidence and thought leadership to shape planning policies and thinking.



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