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Introduction

This paper is prepared as a Briefing Note for the RTPI's Planning Policy and Practice Committee to inform their discussion on 1st December 2010. It sets out what is expected to be in the forthcoming Decentralisation and Localism Bill. It draws on the Coalition Agreement¹, the details of the Parliamentary programme², *Open Source Planning*³ the White Paper on *Local Growth* and a speech given by the Minister for Decentralisation, Rt. Hon. Greg Clark MP on 18th November⁴.

The briefing paper will form the basis of an RTPI briefing on the Bill when it is published. The RTPI stance quoted in this paper is drawn from the *Manifesto for Planning*⁵, from published statements and from a paper presented to, and endorsed by, the RTPI Executive Board in September

This paper is structured in a hierarchical way from national planning to development management. It focuses only on those changes to the system that are expected to be in the Bill – rather than those being effected through e.g. Statutory Instruments or policy guidance.

This draft of the paper only deals with issues directly related to the planning system. The RTPI will need to scrutinise the Bill to ensure that it understands the implications of all the other clauses in the Bill for spatial planning as a whole. These will include provisions on local government finance, including business rates, and the powers of elected Mayors outside London.

It must be borne in mind that the list below is based on a close reading of documents and announcements but elements of it may well be wrong – not least because the Bill was still being drafted as this paper was being written.

Timetable

Publication of the Bill is expected at beginning of December and the Government is keen to have the Second Reading of the Bill before the Christmas recess (21st December 2010) – although it is hard to see how this may be achieved if the first reading is within two weeks of recess. The House returns on 10th January 2011.

footnotes

- ¹ http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf
- ² <http://www.number10.gov.uk/queens-speech/2010/05/queens-speech-decentralisation-and-localism-bill-50673>
- ³ http://www.conservatives.com/News/News_stories/2010/02/New_homes_and_jobs_through_Open_Source_Planning.aspx
- ⁴ <http://www.communities.gov.uk/speeches/corporate/betterplanning>
- ⁵ <http://www.rtpi.org.uk/download/9076/RTPI-Manifesto-for-Planning-2010-full.pdf>

National Planning Policy Framework

Possible Bill content

It is not clear whether the Coalition Agreement commitment to produce a National Planning Policy Framework will need to be embodied in statute and, thus, whether the proposed NPPF will be a statutory document. Planning legislation already allows the Secretary of State to issue guidance.

RTPI Position

The Royal Town Planning Institute has long advocated – and campaigned for - some form of English national spatial framework. In October 2000 the RTPI published *The United Kingdom Spatial Planning Framework: A Discussion*⁶, which was designed to promote discussion on – and exert pressure for – a national spatial framework. In 2006 it published a report – *Uniting Britain*⁷ – which looked at available data sets to start mapping spatial aspects of national policy. The RTPI Manifesto has Supporting national spatial planning frameworks as one of its 14 campaigning points. The RTPI, therefore, welcomes the Coalition’s thinking on this level of planning and has been working with the Government on developing all these initiatives.

Possible RTPI Bill Lobbying points

- If the National Planning Policy Framework is not in the Bill, the RTPI will need to decide whether there is any advantage in seeking to make it a statutory document and for the bill to deal with such issues as:
 - NPPF being defined as part of the Development Plan?
 - Duty to have regard to NPPF?
- How will the National Policy Framework relate to the National Infrastructure Plan and Nationally Policy Statements – and will this relationship be defined in statute?
- How does the Marine Policy Statement align with the NPF and with NPSs given their implications for energy, coastal management, ports and fishing etc?

Infrastructure Planning Commission

Possible Bill content

The Coalition Agreement commitment to abolish the IPC will be embodied in this Bill or in other legislation. Legislation will need to:

- Repeal of that part of the 2008 Planning Act establishing the IPC and/or change references to IPC to ‘Major Infrastructure Planning Unit’;
- Have a Clause to require Parliament (both Houses?) to approve NPSs;
- Have a Clause to require the Secretary of State to decide on recommendations by the MIPU on relevant Development Consent Orders;

footnotes

⁶ Wong, Cecilia et al (2000) <http://www.rtpi.org.uk/download/747/The-United-Kingdom-Spatial-Planning-Framework-A-Discussion.pdf>

⁷ Wong, Cecilia, et al (2007) <http://www.rtpi.org.uk/download/241/spatial2.pdf>

The RTPI Position

*We welcome the Government's clarification that the function of the IPC is to be retained even if the body itself is not. It is critical that there is a specialist body with the skills and expertise to consider proposals for essential major infrastructure projects to allow decisions to be made in the national interest. We believe that people's confidence in the system will be strengthened by the commitment that final decisions on major infrastructure projects will be taken by the Secretary of State within a defined timeframe.*⁸

Possible RTPI Bill lobbying points

- Duty to have regard to NPF?
- Which SoS makes decision (possible conflicts of interest if e.g. the DECC SoS makes the decision on nuclear power stations)?
- A more integrated consents regime?

Presumption in favour of sustainable development

Possible Bill content

It is not clear whether the Coalition Agreement commitment to have a presumption in favour of sustainable development will be embodied in statute or stated in the proposed National Planning Framework (see above). At the moment, the latter approach seems to be more likely – partly because there are already similar duties in legislation (see below). It is also assumed that the key definition of sustainable development will be in the National Planning Framework and not in statute.

Background

The 2004 Planning and Compulsory Purchase Act⁹ already requires that *the person or body must exercise the function [of local planning] with the objective of contributing to the achievement of sustainable development* and the 2008 Planning Act added to the 2004 Act the requirement that: *Development plan documents must (taken as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contributes to the mitigation of, & adaptation to, climate change.*

Equally importantly, Sec.54A of the 1990 Town and Country Planning Act already contains a broad requirement that any determination is in accordance with the development plan.

RTPI position

In general the RTPI is in favour of such a presumption – subject to the points below.

Possible RTPI/joint lobbying points

Important issues are raised by this. The first is what is meant by sustainable development. One of the 14 campaigning points in the Manifesto is *Going beyond simply 'sustainable development'* and the Manifesto sets out the implications of climate change for this concept (page 7). The Bill will, therefore, be deficient if it includes this presumption without defining the term in statute in a way

footnotes

⁸

http://www.rtpi.org.uk/item/3839/pg_dtl_art_news/242/pg_ftr_art

⁹

http://www.legislation.gov.uk/ukpga/2004/5/pdfs/ukpga_20040005_en.pdf

that embraces the implications of climate change – at least as embodied in current legislation - and the RTPI will seeking to ensure that this happens.

The second and allied point is that this presumption comes into play in particular where a local planning has no adopted local plan where *Open Source Planning* states that: *the presumption will be that individuals and businesses have the right to build homes and other local buildings provided that they conform to national environmental, architectural, economic and social standards, conform with the local plan, and pay a tariff* This does require that such national standards are set out in a clear and transparent way and have been the subject of consultation.

Third, this – or some other part of the Bill – should be used to stress the value of quality and good design in the planning process.

Fourth, the RTPI would wish to ensure that the presumption in favour of sustainable development does not overrule the presumption in favour of the development plan.

Finally, the two existing duties quoted in the ‘Background’ note above only refer to local plans and development plans – should this duty be extended to all the statutory activities of planning?

Abolition of Regional Spatial Strategies

*Clause*¹⁰

Abolition of regional strategies

(1) Part 5 of the Local Democracy, Economic Development and Construction Act 2009 (regional strategy) is repealed

(2) The regional strategies under Part 5 of that Act are revoked

Background

Part 1 of this clause has the effect of putting into statute the abolition of regional spatial strategies (RSS) which was a Coalition Agreement commitment. Part 2 effects the revocation of current RSS which the Government attempted to do in a letter from the SoS in July 2010 but which was found to be unlawful following a challenge by CALA Homes.

RTPI Position

The RTPI has made it clear that it is not campaigning for the status quo pre the Election as it had already expressed its concern in the Manifesto that: *We need plans above the local level to deliver development and infrastructure that crosses administrative boundaries, but there is a lack of faith in the current system of regional planning.*

footnotes

¹⁰ This draft clause has already been published as a result of the CALA Homes case.

Possible RTPI Lobbying Points on Strategic Planning

The Government is putting into place a range of structures and initiatives to enable a degree of strategic planning at this level. These include:

- LEPs
- Strengthening provisions for joint core strategies
- A duty to co-operate
- A general duty of competence
- More emphasis on city regions

The RTPI will evaluate all these proposals as they are expressed in draft legislation against the following questions:

- Are areas or communities adversely affected if they are not covered by one or more of the new initiatives?
- Do structures and policy vehicles have statutory definition where this is required?
- Have the proposals made necessary linkages to the existing planning system and to proposals at both national and neighbourhood levels?
- Are new bodies and structures enabled and encouraged (and, if necessary, required) to adopt a spatial planning approach as part of their responsibilities?
- Are the suggested structures and policy vehicles enabled and encouraged (and, if necessary, required) to engage with and be influenced by local and other communities in exercising their functions?
- Given that the new system is community-led, will the suggested structures and policy vehicles form a comprehensive, transparent and inter-related whole if all communities opt to adopt these proposals?
- Do the suggested structures and policy vehicles explicitly link planning with investment?
- Will relevant clauses of legislation give equal weight to the economic, environmental and social remit of spatial planning?
- Will the suggested structures and policy vehicles provide a framework of certainty within which development beneficial to local communities can take place?
- Given that RSS hits not only housing figures but other policy areas e.g renewable energy targets, minerals quotas etc. will the new arrangements for strategic planning be sufficient especially given the huge gaps in LEP coverage?
- Will they serve to retain and develop the expertise, skills, data, analysis and information that exists to undertake this type of planning?

The RTPI will also have to scrutinise the Bill very carefully to ensure that the consequences (intended or otherwise) of the abolition of RSSs and of the regional structures that supported them are highlighted. One such example¹¹ has been raised by an RTPI member.

footnotes

¹¹ On certain applications Councils are required to consult different bodies. A list of statutory consultees can be found in Schedule 5 of the GPDO: <http://www.legislation.gov.uk/uksi/2010/2184/contents/made>. If the Local Planning Authority chooses to approve the application without taking note of a statutory consultee's objection, then the application may currently be referred to the Government Office to consider whether or not to call-in the application on behalf of the Secretary of state (see Circular

Local Enterprise Partnerships

Possible Bill content

LEPs are not to have a statutory purpose and, therefore, will not be on the face of the Bill. Greg Clark has told the Commons that:

The Government do not intend to define local enterprise partnerships in legislation. Governance structures will need to be sufficiently robust and clear to ensure proper accountability for delivery. Partnerships will differ across the country in both form and functions in order to best meet local circumstances and opportunities. A partnership may need legal personality or a specified accountable body in some circumstances, such as if it wished to own assets or contract to deliver certain functions. The constitution and legal status of each partnership will be a matter for the partners, informed by the activities that they wish to pursue.

Possible RTPI Bill lobbying points

The RTPI will need to consider whether there are any advantages in making LEPs statutory bodies. This may not be valuable if LEPs are not to have complete coverage of England but the RTPI may want to lobby for them to take on certain functions – including Design Review Panels.

Local and Neighbourhood Planning

The system

The new local planning system (there has been some talk of doing away with the term LDF and replacing it with 'local plan') will be, as the RTPI currently understands it¹² (once again, this may be all wrong!):

- There will be statutory neighbourhood and local plans;
- Designated bodies such as Town and Parish Councils and neighbourhood forums will be allowed to prepare neighbourhood plans, but
- It is recognised that not all areas will want to a neighbourhood plan and, therefore, it is assumed that there will not be a statutory duty to prepare one – just a right to do so;
- It is assumed that those preparing a plan – or the local planning authority - will be required to consult on it;
- Neighbourhood plans will be 'approved' through referenda of local people following an independent examination;
- If the referendum is positive, then the local authority will have to adopt the neighbourhood plan;
- The local plan will take on a strategic role and will contain e.g. housing numbers (targets?), strategic infrastructure etc. The neighbourhood plan will have to accommodate these strategic proposals – and can accommodate more if they want (but not less e.g. housing than is specified in the local plan)¹³;

footnotes (cont.)

02/09). However, the Government has already signalled the closure of the Government Offices and there are clear implications for the ability of consultees to seek a 'call-in'.

¹² It is relevant that in the 18th November Clark speech, he implied that there might be guidance issued on this at the same time as the Bill is published.

¹³ In Clark's 18th November phrase – neighbourhood plans 'cannot frustrate but can go beyond' local plans

- For those authorities still without a local plan, the presumption in favour of sustainable development embodied in the NPF will apply to every application (a key, therefore, is the definition – but this may well lead to planning by appeal).
- There will be a duty on local planning authorities to consider preparing a joint development plan – and one of the roles of LEPs will be to encourage its member authorities to do this;
- There will still be an Inquiry but the Inspector's report will no longer be binding;
- If a type of development is set out in the neighbourhood plan, then there will be the ability for the community to take such developments out of development control.

Possible Bill Content

- Removing barriers to preparing local plans – such as reporting requirements to DCLG?
- Redefinition of what constitutes the 'development plan' to recognise the removal of RSSs and the introduction of neighbourhood plans?
- Change of name from 'local development framework' to 'local plan'?
- Strengthening provisions for joint development plans?
- Definition of the scope of a 'local plan' and/or of sound planning?
- Change of rules on binding local plan inquiry Inspector's reports?
- Statutory neighbourhood plans; *We will introduce rights in the localism Bill for neighbourhood plans to have statutory force* Greg Clark HoC 21 Oct 2010 : Column 1123
- Definition of who may prepare a neighbourhood plan – or requiring the local authority to define this?
- Procedure for approving a neighbourhood plan – through a local referendum?
- The relationship between the neighbourhood plan and the local plan – the local plan taking precedence?

RTPI position

The system described above is only now emerging and the RTPI will need to formulate its position and its lobbying points on this. The system described, if this is correct, does seem to be a step back from the 'free-for-all' in *Open Source Planning* and a recognition of the need to establish some strategic view – an issue on which RTPI has been campaigning.

The RTPI will be resisting any fundamental reform of the local planning system but will be looking to any legislation to be framed to allow a seamless transition from the current system to any future system. The RTPI fully recognizes that only a minority of local planning authorities have adopted Local Development Frameworks – a position exacerbated by some authorities stopping or reviewing LDF work following the revocation of RSSs. However, overall progress has been made and one estimate is that coverage will be achieved in 2013¹⁴. Any reforms that serve to nullify the progress made will be extremely damaging.

The RTPI will also be scrutinising the draft Bill to determine the implications of different parts of it, including references to Local Development Orders (LDOs) in relation to neighbourhood planning and the Use Classes Order (UCO), in terms of a shift to a 'zoning' approach rather than the current policy led approach.

footnotes

¹⁴ TCPA

The RTPI will also have to look at the resource implications of these provisions – particularly in respect of technical assistance to communities.

Possible RTPI Bill lobbying points

- Maintaining the primacy of the plan;
- The relationship between the NPF and local plans;
- How will the marine plans align with the Local Plans for coastal LPAs. RTPI has been arguing for a coordinated (or even integrated) marine/terrestrial planning framework or scheme;
- Identifying the resource implications;
- Examining how the system as a whole is interrelated.

A Duty to Co-operate

Possible Bill content

A duty to co-operate between local planning authorities and such other bodies as may be defined in statute?

Background

There is already a limited duty co-operate in the Local Government and Public Involvement in Health Act 2007¹⁵. This refers only to the preparation of Local Area Agreements (LAAs) and there is a duty to co-operate on flood related issues.

There are already numerous examples of joint working in spatial planning including the preparation of joint Local Development Framework core strategies; Sub-regional working and sub-regional strategies and the RTPI's Briefing Note on Strategic Planning provides links to a range of examples of these. This is very much to be encouraged and the RTPI accepts that it has a role in working with others, notably the Local Government Group and the Planning Officers Society to provide guidance and examples of effective practice and will be looking to Government to endorse this activity.

RTPI position

In general, the RTPI welcomes this provision.

Possible RTPI Bill lobbying points

The RTPI will be looking to the wording in the Bill with the following questions:

- Will this duty apply at all local authorities, or to all statutory bodies and to specified private sector bodies and will it apply specifically to LEPs even if they are not statutory bodies?
- Will it apply to all activities including local development planning, local infrastructure planning, sub-national working and the preparation of the national planning framework?
- Is co-operation defined? In effect, the duty in the 2007 Act was discharged by taking part in the process of drawing together an LAA whatever the outcome was;
- Will, therefore, failure to co-operate be defined?
- Will there be any sanctions specified for failure to co-operate and which may be responsible for encouraging, monitoring and taking action on co-operation?

footnotes

¹⁵ and in, for example, the Children's Act 2004

- Whether it strengthens the opportunities for voluntary joint working already embodied in the 2004 Act – or whether it introduces a degree of coercion into the process?
- Will it be used to drive the merging of planning departments?

A General Power of Competence

Possible Bill content

The Coalition Agreements states that: *We will give councils a general power of competence*

The RTPI position

The RTPI generally welcomes this power.

Development Management

Possible Bill content

- Fast track permissions for specified types of development in accord with an approved neighbourhood (development?) plan?
- A duty on developers to consult?
- Third Party Right of Appeal?
- Abolishing the pre-determination rule?
- Local discretion in setting application fees?
- Encouragement of Local Development Orders (LDOs)
- Voluntary agreements?

The changes to the development management system covered below should be considered within the context of the possibility of fundamental changes to the relationship between local planning and development decision-making covered above.

Fast track permissions/Community Right to Build

Possible Bill content

The Secretary of State is quoted¹⁶ as saying that:

Councils will then ... adopt the neighbourhood plans, which would be put on a "fast track" to approval, meaning urgent projects can short-cut the system.

The RTPI position

It is not clear whether this is a reference to the already announced Community Right to Build and shows a welcome move to align this right more closely with neighbourhood planning and/or a wider move towards a 'zoning leading to permission' system described under local planning, above.

It is relevant that the RTPI's response¹⁷ to the Community Right to Build stated that: *It is clearly vital that we look at innovative proposals to provide more much-needed affordable housing and other*

footnotes

¹⁶ <http://www.bbc.co.uk/news/uk-politics-11780918>

developments, especially in rural areas. However we believe that local plans, developed by elected members in partnership with local people and businesses are the most democratic way to deliver the aspirations of local communities for housing provision.

Possible RTPI Bill lobbying points

If 'fast tracking or local development orders (see below) are somehow related the preparation of a neighbourhood plan, the RTPI will need to ensure that there is mechanism to demonstrate the implications for a local planning authority before a neighbourhood plan is approved through a referendum.

A duty on developers to consult

Possible bill content

Rt. Hon. Greg Clark MP stated in his Localis speech on 18th November that it will be embodied in law that 'developers must consult local people'.

The RTPI position

The RTPI *Manifesto* and the fact that it runs Planning Aid both show full support for local involvement in planning. The duty on developers as opposed to local planning authorities may be based in part on the approach being adopted by the IPC in relation to nationally significant infrastructure projects.

Possible RTPI Bill lobbying points

It may be welcomed in resource terms but raises a number of questions:

- How, and by whom, will it be judged as to whether the duty has been fulfilled satisfactorily?
- Will it be accompanied by a power to refuse to accept applications on which consultation is deemed inadequate;
- Will it be limited to certain types/size of development?
- Will it replace or run in parallel with existing regulations/practice on notification?

Third Party Right of Appeal

Possible Bill content

Open Source Planning states that:

We will make the system symmetrical by allowing appeals against local planning decisions from local residents, as well as from developers. There have been subsequent reports in the media that the Government has dropped this provision but this has not been confirmed inside DCLG. Even if the establishment of a third party right of appeal is not included in the initial draft of the Bill, it may be that it will be introduced as an amendment during the passage of the Bill as an alliance between the CPRE and the Environmental Law Foundation¹⁸ has already started to campaign for this¹⁸.

footnotes (cont.)

¹⁷

http://www.rtpi.org.uk/item/3917/pg_dtl_art_news/242/pg_ftr_art

¹⁸

http://www.planningportal.gov.uk/england/government/news/archive/2010/august2010/2010_08_week_4/260810_1

The RTPI Position

The RTPI has not had a stance on this historically – although it already exists in the Irish Republic and in the Isle of Man and there has been a long history of pressure for it in England¹⁹. In establishing its stance, the RTPI will need to consider whether:

- Such a right can be resisted in the longer term given European legislation on environmental decision making;
- It will be seen as an integral part of a ‘localist’ approach;
- It could be justified in specified limited circumstances including: where an authority’s own development is not in accordance with a local plan – or is proposed in the absence of one; where other development is not in accordance with a local plan but the authority has failed to identify it as such and where it is made by those with a proper standing, such as those who had already objected to the original application.

Pre-determination

Possible Bill content

Open Source Planning states that: *we will legislate to ensure that councillors (while being properly prevented from advancing personal interests) have the freedom to campaign and represent their constituents, and then speak and vote on those issues without fear of breaking the rules of ‘pre-determination’.*

The position appears to have been modified slightly in a statement issued by DCLG²⁰ which says that: *These proposed legislative changes will mean councillors can be very clear and discuss freely their view and voting intention and publicise their views as they see fit. However, councillors must be prepared to listen to arguments and evidence before making their decision. These changes will reduce the threat of challenge*

The RTPI Position

The RTPI believes that this both leaves local authorities potentially open to legal challenge on the grounds of lack of transparency and changes the relationship between political judgement and independent professional advice.

Possible RTPI Bill lobbying points

To have this Clause removed if it has the effect of doing away with the pre-determination rule.

Application fees

Possible Bill content

The Government has announced²¹ that:

local councils will be given the power to set their own fees to cover costs. They will not be able to make a profit on fees but they will be able to recover the actual cost of submitting an application from those benefiting.

footnotes

¹⁹ See, interestingly, <http://www.parliament.uk/documents/commons/lib/research/rp2002/rp02-038.pdf>

²⁰ <http://www.communities.gov.uk/news/corporate/1768609>

²¹ <http://www.communities.gov.uk/news/corporate/17686091>

The RTPI position

The RTPI has not formulated a position on this as yet but will need to consider whether this proposal give those using the planning application system the certainty that they require if they are to face different fee structures across different authorities. However, it will also need to bear in mind that this provision may lead to a better resourced development management system.

Local Development Orders

Possible Bill content

Some form of encouragement of the use of LDOs?

Background

Local Development Orders already exist in the 2004 Planning and Compulsory Purchase Act as modified by the 2008 Planning Act. A 2009 Research report by Entec for the IDeA²² found that: *So far, there are no adopted LDOs. Whilst we have noted some interest, generally, there is a low level of interest in LDO development. There are two known to be actively being prepared.*

The RTPI position

The RTPI supports and encourages the use of LDOs where local planning authorities considers them to be valuable.

Possible RTPI Bill lobbying points

The position of local (neighbourhood?) development orders if they are aligned with neighbourhood plans has been dealt with above. It will also be interested to see whether, in the light of the poor take-up of this tool, the Bill will add some form of incentive or coercion for the use of LDOs. This would go against the creation of an 'architecture of choice' that that is at the heart of localism.

Voluntary agreements

Possible Bill content

Open Source Planning suggests the possibility for developers *to reach voluntary agreements that recompense immediate neighbours for any loss of amenity.*

The RTPI position

There are a wide range of reasons why this is a poor and potentially unworkable idea, including what constitutes an immediate neighbour, the level at which loss of amenity becomes a wider than 'neighbour' issue, the position of a household that has accepted recompense and then moves and the availability of recourse if the development fails to confirm to the neighbour agreement.

Possible RTPI Bill lobbying points

If this is embodied in the Bill, the RTPI will seek to have it removed.

footnotes

²²

<http://www.pas.gov.uk/pas/aio/106047>

Use Classes Order

Possible Bill Content

It is assumed that changes to the UCO will not be dealt with in the Bill – apart from the provisions for Local Development Orders dealt with above. Amendments to the Use Classes Order in respect of schools, and Houses in Multiple Occupation are being dealt with through Statutory Instruments. The reference to LDOs in Open Source Planning to *amend the Use Classes Order so that people can use land and buildings for any purpose allowed in the local plan* is dealt with above.

The RTPI position

The RTPI believes that, if the Coalition Government wishes to review the UCO, then this should be done comprehensively and that changes to the UCO should not be proposed simply to fulfil political agendas.

Incentives and obligations

New Homes Bonus

Possible bill content

It is not clear whether this will require legislation. If it does, the Bill may simply contain a Clause to establish a scheme to be known as the New Homes Bonus – with the details left to Regulations.

Background

The Government has already announced its scheme for paying local authorities an incentive of the retention of the Council Tax generated by each new home²³. In November it issued a consultation on the details of this scheme - now termed 'New Homes Bonus'.

The RTPI position

The RTPI does not believe that the New Homes Bonus will provide enough certainty as to its eventual usage to persuade communities and local authorities to accept development in situations where it would not have otherwise done so. It also believes that it is potentially dangerous if it seeks to act as an incentive to build homes that are over and above those embodied by communities in their own neighbourhood plans.

Finally, the RTPI is aware that a scheme such as this – and CIL, below – will give rise to understandable, but unjustified, criticism that planning permissions are being 'sold'.

Possible RTPI Bill lobbying points

The RTPI will need to provide an evidence based response to these provisions to support its stance both as to the effectiveness of the scheme and the need to align this more closely with the planning process.

footnotes

²³

<http://www.communities.gov.uk/news/corporate/1681467>

Community Infrastructure Levy

Possible bill content

The Community Infrastructure Levy is embodied in statute in the 2008 Planning Act. The DCLG has issued a statement²⁴ on CIL which says that:

Some changes to the levy will require amendments to legislation and regulations. The Government will include provisions in the Localism Bill to limit the binding nature of examiners' reports, and amend the Community Infrastructure Levy Regulations 2010 to give local communities more control over the levy, and make it more responsive to local needs. The Government will require charging authorities to allocate a meaningful proportion of their levy revenues raised in each neighbourhood back to that neighbourhood ...

Background

The DCLG statement on CIL which says that the levy will be retained but will be reformed to ensure neighbourhoods share the advantages of development by receiving a proportion of the funds councils raise from developers. These will be passed directly to the local neighbourhood. It also proposed independent assessors of the CIL charges and changes to thresholds and payment regimes. (The statement also confirmed no significant changes will be made to the current rules about planning obligations, also known as Section 106 agreements.)

The RTPI position

The RTPI supports the principles of tariff systems or the Community Infrastructure Levy, in conjunction with site specific planning agreements, to deliver local infrastructure²⁵. There is a danger that, if a 'meaningful proportion' of the sum raised is directly to communities then this may mean that a proportion of CIL will not be spent on strategic infrastructure. Neighbourhood plans could provide one means by which a community's priorities for spending CIL are established – but it is not clear whether the DCLG intends that this should be their role.

Possible RTPI Bill lobbying points

RTPI lobbying may best be done at the draft Regulations stage but the Bill will be examined to see whether there opportunities for linking statutory spatial planning with CIL allocation.

Appeals System

Possible Bill content

Open Source Planning stated that:

We will eliminate large amounts of unnecessary bureaucracy by: ... limiting appeals against local planning decisions; (such decisions will be challengeable by developers or local residents only if they involve abuse of process or failure to apply the local plan);

Open Source Planning also suggests that appeals against abuse of process will be dealt with by the Local Government Ombudsman with the Inspectorate only hearing appeals on policy issues.

footnotes

²⁴ <http://www.communities.gov.uk/news/corporate/176860911Incentives/CIL/Tariff>

²⁵ RTPI Manifesto for Planning 2010.

The RTPI position

The RTPI Manifesto includes *Retaining independent examination of planning decisions* as one of its fourteen campaigning points. The Government's proposals do not cut across this stance. In some ways, these proposals can be seen to be describing the current situation. However, the RTPI will need to ensure that any diminution in the right of appeal does not run counter to international obligations on access to environmental justice.

Enforcement

Possible Bill content

The DCLG has indicated that the Bill will contain provisions to strengthen the enforcement system and that this may include taking a stronger line on retrospective applications. Fuller details were not available at the time of writing this paper.

The RTPI position

The expertise of NAPE will be used in responding to these clauses.

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