



The RTPI and the Localism Bill

1. The Royal Town Planning Institute (RTPI) supports the objectives that underlie the Localism Bill and has been working with the Government, with MPs across all parties and with other non-governmental organisations to make the Bill effective. The RTPI very much welcomes the Bill placing planning at the heart of the localism agenda. Planning is central to enabling communities to develop their vision for the future of their area, to provide the means for areas and the nation to decide on priorities for investment and to tackle the challenges of climate change, sustainable economic growth and social inequity. We congratulate Ministers for working to improve parts of the Bill but strongly believe other parts remain fundamentally flawed.

2. **RTPI Key Issues:**
 - A. **Duty to cooperate.** (See this briefing paras 4-7).
The RTPI has worked closely with the Government on strengthening the arrangements for planning at the larger than local level and believes that the **amended Clause 90 should be supported**. Greg Clark is to be congratulated for listening on this issue.

 - B. **Neighbourhood Planning.** (See paras 8-15).
The proposed neighbourhood planning system remains overly complex and this may mean that neighbourhood planning will not be as visionary, inclusive, widespread or effective as intended. **Government amendments still do not deal with many of the key issues.**

 - C. **National Planning Policy Framework (NPPF).** (See paras 16-19).
The NPPF needs **to be on the face of the Bill** if it is to be effective.

 - D. **New clause 15: financial considerations as a 'material consideration'.** (See paras 20-24).
The Government's new amendment to make financial considerations a material consideration is deeply flawed and potentially very damaging to proper planning and contradicts assurances given by ministers just 12 weeks ago. **The RTPI is calling for the amendment to be withdrawn.**

3. The RTPI also has **a number of other concerns** about the Bill and these will be dealt with when the Bill enters the House of Lords. These relate to the provisions of the Bill relating to local planning, pre-application consultation and enforcement, and to some of the others not in the 'planning' related sections of the Bill, such as pre-determination, right to challenge community assets and referendums, which have the potential to have an adverse impact on effective planning.

A. The Duty to Co-operate

4. Much of the RTPI's work during the passage of the Bill to date has focused on Clause 90, the Duty to Co-operate. Since publishing its own amendment, the RTPI has been working with the Government and with other key stakeholders to seek to develop the RTPI's approach and to incorporate the thinking behind amendments put forward by other bodies.
5. The Government has now published its amendment to Clause 90. **The RTPI welcomes the progress that has made on developing this key clause in the Bill and we feel that the published amendment incorporates and takes forward the thinking behind the RTPI's original amendment.**¹ We appreciate the willingness of Government to engage with the RTPI and others on this issue. We recognise, however, that this amendment does not go as far as other interests may wish in, for example, setting out the types of plan that may be used to strengthen the strategic framework at this level.
6. Nevertheless, the RTPI believes that this amendment has the potential to improve planning at a larger-than-local level and to encourage effective solutions to cross-boundary issues by:
 - encouraging local planning authorities to consider seriously and positively at an early stage in the process whether their objectives and the needs of communities would not be better dealt with through joint working and co-operation;
 - allowing freedom for local authorities and others to choose the ways in which they do co-operate, including drawing up agreements between different bodies; but
 - providing a degree of sanction against those whose statutory plans do not address wider needs by requiring this new duty to form part of the Inspectorate's assessment of the 'soundness' of Local Development Frameworks;
 - encouraging co-operative and joint working not just between adjoining authorities but between other authorities and bodies in the wider area; and
 - bringing non-statutory bodies – notably Local Enterprise Partnerships (LEPs) – into joint working through allowing the Government to prescribe them in further regulation or statutory guidance.
7. **The RTPI will continue the debate on strategic planning, including considering any further improvements to Clause 90, but considers that significant progress has been made on this Clause.**

footnotes

¹ <http://www.rtpi.org.uk/download/11140/110214-RTPI-proposed-amendments-clause-90.pdf>

B. Neighbourhood Planning

8. The RTPI has long advocated the principle that decisions should be made democratically at the most appropriate level, and the need for planning policies and decisions to be based on meaningful involvement with the communities that they affect. Planning has led practice in this respect. The Localism Bill takes the concept of neighbourhood planning and decision taking further. We welcome the overall approach to neighbourhood planning including the fact that it still retains the primacy of democratically elected local councils in the planning of their areas.
9. We consider, however, that the neighbourhood planning provisions in the Bill are still too complex and are opaque on key points. The RTPI also notes that there are options available for meaningful neighbourhood planning that could be undertaken without the need for an additional cumbersome layer of legislation and the RTPI is preparing a guide for communities on working within existing legislation to achieve many of the same outcomes as would neighbourhood planning.
10. The RTPI feels that a number of the new provisions in the Government's tabled amendments do improve the system of neighbourhood planning and we welcome, for example, a greater emphasis on the involvement of local workers and councillors and further moves to ensure that neighbourhood forums reflect the character of the neighbourhood as a whole.
11. However, there are three issues that the RTPI feels strongly that do need to be addressed in the Bill in order to improve the working of the neighbourhood planning system. The RTPI has drafted amendments to achieve all these three objectives.
12. **The RTPI considers that Neighbourhood Development Orders including Community Right to Build Orders should only be brought forward through a Neighbourhood Plan.**

This proposal seeks to ensure that Neighbourhood Development Orders (NDOs) are considered within a wider neighbourhood context and do away with overlapping plans which will be difficult to navigate both for communities and for the development industry and infrastructure providers. It would reduce complexity in the neighbourhood planning system.
13. **The RTPI considers that those undertaking a neighbourhood plan should have a duty to consult within the neighbourhood area at a formative stage in the plan.**

This proposal is designed to increase transparency and accountability in neighbourhood planning. We recognise that the Bill allows for Regulations to be made to achieve this but we do not consider this to be adequate.
14. **The RTPI considers that neighbourhood plans, and the referendums on them, could be used to express the community's priorities for investment in their area.**

These would still have to accord with the strategic priorities set out in the local plan but could, for example, express the community's own priorities for the neighbourhood element of the Community Infrastructure Levy (CIL) and the New Homes Bonus (NHB). This proposal would make neighbourhood plans more positive and meaningful.
15. **The RTPI will continue to press for these changes to be made to the Bill.**

C. The National Planning Policy Framework

16. **The RTPI firmly believes that the NPPF must be embedded in legislation and needs to be on the face of the Localism Bill.** As it stands, the Localism Bill does not contain any Clauses or references relating to the National Planning Policy Framework (NPPF) and the Government amendments tabled do not provide for this.
17. There are five reasons why the NPPF needs to be referenced in the Bill:
- It would strengthen the effectiveness of this document if a range of bodies and statutory plans were specifically required to demonstrate that they had had regard to it;
 - There is the need to establish its position in relation to other statutory national policy statements, notably National Policy Statements embodied in the 2008 Planning Act;
 - There is also the need to establish its status in relation to non-statutory national plans such as the National Infrastructure Plan;
 - A statutory basis could be used to commit successive Governments to seek the approval of Parliament for this key document;
 - It is already clear from Government statements that the NPPF will contain some fundamental guidance including; the establishment of a presumption in favour of sustainable development and the consequent definition of 'sustainable development'. Such fundamental changes to the planning system do require a statutory basis and the ability of Parliament to approve them.
18. The RTPI has considered three approaches to embedding the proposed NPPF in statute.² Having examined all these options, **the RTPI recommends the option of having a new stand-alone Clause in the Bill**, which is set out below:

National Planning Policy Framework

- (1) *The Secretary of State shall issue, designate, and keep updated a National Planning Policy Framework which shall establish policies to achieve sustainable development in the development and other use of land.*
- (2) *Such policies should relate to the mitigation of, and adaptation to, climate change*
- (3) *Before designating a document as the National Planning Policy Framework for the purposes of this Act or before amending any such document, the Secretary of State must carry out an appraisal of the sustainability of the policy set out in the document or amendment to it.*
- (4) *A document may be designated as the National Planning Policy Framework for the purposes of this Act only if any consultation, publicity and the parliamentary requirements set out by the Secretary of State, have been complied with in relation to it.*

footnotes

² <http://www.rtpi.org.uk/download/11711/Localism-Bill-RTPI-Discussion-Paper-national-planning-policy-framework-April-2011.pdf>

(5) *The requirements in (4) apply to any amendments to the National Planning Policy Framework.*

19. The RTPI will continue to press to have the NPPF placed on the face of the Bill.

D. Financial considerations as a material consideration

20. The Government has tabled an amendment to introduce a new clause (15) which states that:

A local planning authority is to have regard to material considerations in dealing with applications including any local finance considerations, so far as material to the application. "local finance consideration" means: a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown [this may be taken to cover the payment of New Homes Bonus], or sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy;

21. Current government guidance states; 'the fundamental principle that planning permission may not be bought or sold'.³ The Nolan Committee's 1997 Report on *Standards of Conduct in Local Government* highlighted the need to safeguard against any public perception that planning permissions were being bought and sold.

22. For this reason, whilst it is good practice that the viability of a scheme will be taken into account, incentives and inducements attached to a development have not been a material consideration in deciding on planning applications, unless such payments are required to make an otherwise unacceptable development acceptable by paying for, for example, road access to the site.

23. Indeed, this was the current Government's clear stance just three months ago when it stated in its February 2011 response to consultations on the New Homes Bonus that:

Local planning authorities will be well aware that when deciding whether or not to grant planning permission they cannot take into account immaterial considerations. The New Homes Bonus cannot change this and nor is it intended to. Local planning authorities will continue to be bound by their obligations here.⁴

24. The RTPI believes that the Government position stated just three months ago is the correct one and will press for this amendment to be withdrawn or voted against.

footnotes

³ Circular 05/05: *Planning Obligations*

<http://www.communities.gov.uk/documents/planningandbuilding/pdf/147537.pdf>

⁴ Department for Communities and Local Government (2011) *New Homes Bonus Scheme: Summary of responses to consultation*, February, p.28

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