

1st June 2011

Other Planning Provisions in the Bill

The RTPI and the Localism Bill

1. This Briefing on the Localism Bill from the Royal Town Planning Institute (RTPI) is written following the House of Commons Report Stage and Third Reading on 17th and 18th May and before the Localism Bill enters the House of Lords for its Second Reading on 7th June 2011.
2. The RTPI has over 23,000 members who work in the public, private, voluntary and education sectors. It is a charity whose purpose is to develop the art and science of town planning for the benefit of the public. The RTPI develops and shapes policy affecting the built environment, works to raise professional standards and supports members through continuous education, practice advice, training and development. We run Planning Aid in England – supporting communities and individuals through a locally-based network of 1,200 RTPI members who give their time and expertise free of charge – a service at the heart of localism.
3. The RTPI supports the objectives that underlie the Localism Bill and is keen to continue working with the Government and others 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.
4. Within this overall position, the RTPI has seven main areas of concern:
 - i. arrangements for strategic planning between the local and national levels needed to be strengthened – and we now welcome the new duty to co-operate [Clause 95, formerly Clause 90] based on an RTPI amendment;
 - ii. the National Planning Policy Framework announced in the Coalition Agreement needs to be embodied in statute;
 - iii. the proposed neighbourhood planning system is overly complex and may mean that neighbourhood planning will not be as visionary, widespread or effective as intended;
 - iv. the clauses relating to enforcement need clarifying and strengthening;
 - v. **the provisions of the Bill relating to local planning, and pre-application consultation, whilst generally welcomed, should be made more straightforward and may have unintended consequences to the detriment of effective planning;**
 - vi. The new clause on local finance considerations and applications for planning permission [Clause 124, formerly New Clause 15] must be withdrawn because, as drafted, it represents a fundamental and potentially very damaging shift in the basis on which planning decisions should be made;
 - vii. some of the other provisions in the that are not in the 'planning' sections of the Bill but which have the potential to have a direct impact on the delivery of planning.

5. The RTPI is writing Briefing Papers on all of these concerns. The proposed amendments set out in this briefing paper address the fifth of these concerns. Other post-Third Reading Briefing Notes are being placed on the RTPI website (www.rtpi.org.uk).

Other planning provisions in the Bill

6. The other key provisions of the Bill relating directly to planning are:
 - Local development schemes [Clause 96, formerly Clause 91];
 - Adoption and withdrawal of development plan documents [Clause 97, formerly Clause 92];
 - Local development: monitoring reports [Clause 98, formerly Clause 93];
 - Consultation before applying for planning permission [Clause 107, formerly Clause 102]
 - Qualifications of independent examiners for neighbourhood planning [Schedule 10: para 7(6) of Schedule 4B to the Town and Country Planning Act 1990 as proposed to be amended].

Local Development Schemes

8. Clause 96 (formerly Clause 91) proposes to remove the need for LPAs to have their local development scheme (LDS) approved by the Secretary of State, clarifies the process of bringing the LDS into effect, and makes provisions for certain interventions by the Secretary of State or Mayor of London.
9. However, it maintains the requirement to produce an LDS and keep it up to date. The intended purpose of the LDS was to be the means by which communities could understand what the LDF comprised and how it was being produced.

The RTPI's Position

10. The RTPI welcomes the increased flexibility on the preparation and review of Local Development Schemes (LDSs) provided by the proposals in the Bill, but considers that the reforms may not go far enough in terms of making LDSs as accessible and useful to plan users as they could be.
11. The RTPI considers that Local Development Schemes:
 - are too technical to be meaningful to communities;
 - constrain creativity and innovation in planning practice by focusing on a mechanistic process-driven approach to plan delivery;
 - cover too much of the detail/contents of policy documents too far ahead in the process;
 - are usually out of date by the time they are published, and then need constant updating, which is impracticable for documents that are often published as printed booklets – so needing to be supplemented by web-pages or addenda; and
 - effectively prevented LPAs from being as responsive to changing needs as they needed to be, including not being responsive enough to address neighbourhood planning activities.

12. The RTPI supports the principle of local authorities providing up-to-date and accurate information to inform users of their local plans as to (a) which planning policies are currently in force in an area, and (b) what the local planning authority's intentions are to add to, amend or review those policies, including their proposed content, timing and coverage. However, the Institute does not consider that these information needs are necessarily best met through the existing LDS model, even as proposed to be amended by the Bill.
13. Planning authorities do need to be disciplined in meeting the timescales and priorities set through their LDS. Previously, councils were rewarded or penalised through Housing and Planning Delivery Grant allocations for meeting LDS timescales. However, enforcement of breaches is problematic through legislation, especially with regard to sanctions to be taken. Currently, section 19(1) of the Planning and Compulsory Purchase Act 2004 in combination with section 20(5) of the same Act, imply that an examination Inspector should reject a plan that has not been prepared in accordance with the LDS, although in practice Inspectors have not done so. There is an expectation that the need for fiscal incentives or legislative sanctions to encourage timely plan preparation may be superseded by the incentive of the proposed "presumption in favour of sustainable development".
14. The RTPI considers that the current LDS model is not compatible with the Bill's proposals for neighbourhood planning, which will require a far more accessible, responsive and flexible system of information provision.
15. The key to meeting the needs of communities and the development industry in this regard is in concentrating on information management. The RTPI will therefore be calling upon the Government **to replace the requirement to prepare a Local Development Scheme with a duty to provide up-to-date information about the status and coverage of plans and the authority's intention for their future preparation, including timing, content and coverage.** The RTPI will propose amendments to this effect.
16. The RTPI notes that the Planning Officers Society have proposed an alternative "Community Planning Statement" that combines the LDS, Statement of Community Involvement and Annual Monitoring Report(s) into a single document. While it is agreed that there is scope to further simplify the content and procedures for AMRs (see below) and SCIs, it is not considered that the proposed amalgamation of these documents into a single volume will assist with increasing the accessibility, responsiveness and flexibility required to make these information sources fit for purpose.

Adoption and withdrawal of development plan documents

17. Clause 97 (formerly Clause 92) proposes to remove the provisions of the existing legislation that make examination Inspectors' recommendations binding on a LPA. Instead, where an Inspector's report finds that a DPD is sound, the LPA may adopt it with non-material changes. Alternatively, where it is found unsound, the LPA may request recommendations for changes to make it sound, and may adopt the DPD having made those changes (and any non-material changes).

18. The clause also regularises the practice of planning authorities withdrawing development plans at various stages in the process, giving them more flexibility to amend parts of their plans and “go back a stage”, rather than taking plans that are likely to be found unsound right through the process.

The RTPI’s Position

19. Generally speaking, the RTPI is supportive of this clause, feeling that the proposals largely regularise practices that have emerged through experience with the system since 2004.
20. However, the RTPI (in common with others, including the Law Society) have **concerns about the interpretation of “non-material changes”, and seek clarification of this term through guidance in order to prevent legal challenges.**
21. The RTPI also has some concerns regarding clause 97(3)(4), about allowing councils to withdraw their plans at any stage in the process. The concern relates particularly to withdrawal after the end of an examination on the basis that this could allow councils to strategically withdraw a plan pending a (possible) unfavourable examination report in order to prevent the publication of information in the report that might be used as a material consideration in the determination of a planning application that is not favoured by the council. The RTPI will be examining the potential consequences of this issue in greater detail and may consider proposing an amendment.

Local development: monitoring reports

22. Clause 98 (formerly Clause 93) proposes to remove the requirement to produce a single annual report in December of each year, with LPAs being given discretion to produce more than one report (perhaps on different topics) on a more frequent basis (but not less frequently), and at any time of the year. The acronym AMR is then proposed to stand for “Authorities’ Monitoring Report(s)”.
23. The clause also reduces the statutory requirement for AMRs so that they become owned by the LPA as a tool for monitoring its own objectives, rather than those set for it by government.

The RTPI’s Position

24. This does allow LPAs to stagger their reporting across the year, depending on when data is available, which would seem to be an improvement over the current system whereby housing development data, for example, is already 9 months out of date at the time of publication.
25. There is a question as to whether removing the statutory basis for monitoring some particular types of data may frustrate attempts to meaningfully compare development issues between local authorities and over time, and may enable councils to publish only selected information.
26. The RTPI considers that this provides an adequate statutory framework for monitoring, but will need to be supported by a culture change in local government that stresses the importance of monitoring in providing feedback on the effectiveness of policies. The deregulation of monitoring elevates the importance of the Government’s stated emphasis on the value of evidence in supporting local planning policies, and this will need to be backed up in the forthcoming National Planning Policy Framework.

Consultation before applying for planning permission

27. Clause 107 (formerly Clause 102) proposes that developers should be obliged to undertake consultation on their proposals, and to have regard to comments received, prior to submitting a planning application. It is intended that this provision should apply to applications above a certain threshold. This provision essentially legislates for existing good practice.
28. The thresholds would be set through regulations, but those currently being discussed are around the 200 dwellings mark (and its commercial equivalent), which would result in the provision applying to around 200 applications per year, the vast majority of which already undertake pre-application consultation for good practice or Environmental Impact Assessment reasons.
29. A problem with legislating for good practice is that it tends to detract from the benefits of the practice, and make the process a “tick-box” exercise (cf. “design and access statements”), thereby reducing the benefit, and redefining consultation from “good practice” to “red tape”.
30. While the RTPI strongly supports the principle of pre-application consultation, it is not convinced that this provision is necessarily the best way forward. It might be more appropriate to look at ways in which positive and successful consultation can be made a material consideration in the determination of planning applications.

Qualifications of independent examiners

31. The RTPI is very pleased that the Government has withdrawn the clause [former clause 7(6)(b) of Schedule 4B to the Town and Country Planning Act 1990 set out in Schedule 10] which proscribed an employee of the Crown or of an authority with local government functions from being an independent examiner of neighbourhood plans.

Royal Town Planning Institute

The RTPI is a charity registered in England (262865) and Scotland (SC 037841)