

1st June 2011

Non-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 examined those parts of the Localism Bill that do not fall within the 'planning' sections of the Bill but which could have a direct impact on the delivery of an effective, open and positive planning service. These are:
 - Pre-determination [Clause 14, formerly Clause 13];
 - EU Fines [Clauses 31-37, formerly Clauses 30-34];
 - Local Referendums [Clauses 42-58, formerly Clauses 39-55];
 - Community Right to Challenge [Clauses 68-73, formerly Clauses 66-70];
 - Assets of Community Value [Clauses 74-93, formerly Clauses 71-88]
 - Community Right of Appeal [former New Clause 4]
3. 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.
4. 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.
5. 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] 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] 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.**
6. The RTPI is writing Briefing Papers on all but the first of these concerns. The proposed amendments set out in this briefing paper address the last of these concerns. Other post-Third Reading Briefing Notes are being placed on the RTPI website (www.rtpi.org.uk).

Other provisions in the Bill

Pre-determination

7. Clause 14(2) (formerly Clause 13(2)) states that:
- A decision-maker is not to be taken to have had, or to have appeared to have had, a closed mind when making the decision just because—*
- (a) *the decision-maker had previously done anything that directly or indirectly indicated what view the decision-maker took, or would or might take, in relation to a matter, and*
 - (b) *the matter was relevant to the decision.*

The RTPI’s Position

8. The RTPI was originally concerned when this proposal was put forward in *Open Source Planning* that the proposed abolition of the ‘pre-determination rule’ could have the effect of altering the relationship between planners (as professional advisers) and elected members (as decision takers) insofar as the change could have meant that an elected member could have made up their mind on a planning application before hearing either the professional advice or the submissions from other parties at a planning committee meeting.
9. Clause 14(2) does not appear to be framed to allow this but **the RTPI still shares the concerns of others that the phrase ‘closed mind’ is not the correct phrase given the RTPI’s concern and we regret that, despite the Minister of State’s commitment to look again at the wording of this Clause¹, this has not been changed.**

EU Fines

10. Clause 31 (formerly Clause 30) provides the:
- Power to require local or public authorities to make payments in respect of certain EU financial sanctions.*

footnotes

¹ Public Bill Committee 3rd February 2011 c282

The RTPI's Position

11. The RTPI is aware that The LGA is seeking to have these provisions removed from the Bill, stating in its Commons briefing that:
They would require local authorities to pay parts of national fines passed down to the UK Government by the EU, despite this possibility never have been suggested to councils, or consulted upon. It would be impossible for the Government to accurately and fairly judge the proportion of a fine that a council should be forced to pay, with large, unfair fines on councils significantly threatening local public services. This proposal would also put in place an entirely new regime for the Government to impose fines on councils extra-judicially, which is fundamentally unconstitutional.²
12. The RTPI is particularly concerned that such EU financial sanctions relating to, for example, a failure to achieve agreed targets on the proportion of energy derived from renewable sources, may be judged by Government to result in part or in whole, from some form of failure in the local government planning system rather than a failure of national policy. The Bill does not allow any means of discussion on the allocation of fines.
13. **The RTPI agrees with the LGA that this provision requires proper discussion with local government and representative bodies and should not be introduced into legislation until this has happened. The RTPI, therefore, supports the LGA in calling for these provisions to be removed from the Bill.**

Local Referendums

14. Clause 43 (formerly Clause 40) - Petition for local referendum – states that:
*(1) A petition complies with this section if—
(a) it requests the principal local authority to hold a local referendum in a relevant area of that authority,
(b) it is duly signed by the required percentage of local government electors in that area, taken as a whole (see section 44), and
(c) it states the question that the petitioners want to be asked in the referendum.*

The RTPI's Position

15. The RTPI is aware that the British Property Federation (BPF) is seeking to have a planning decision added to the list of proscribed matters for a referendum and have drafted an amendment to Clause 47 (formerly Clause 44):
*Clause 47, page 40, at end insert
(6a) The fifth ground is that it relates to a planning application being considered by the local authority*
16. The RTPI supports the BPF's view that:
We have a democratic planning system in which an applicant for planning permission submits an application, those with a legitimate interest have opportunities to object and a decision is reached by elected local councillors. The Localism Bill strengthens the degree of pre-application consultation that will be required in many cases in the future. It would be wholly unreasonable as well as a waste of local resources if local referendums could seek to influence

footnotes

² <http://www.lga.gov.uk/lga/aio/16195428>

or overturn planning decisions taken by a democratically elected authority. Whilst a local referendum can be ignored the impact is likely to be one of uncertainty, delay and additional cost. Moreover, the ability to hold such a referendum would sit strangely with the Government's commitment to introduce a presumption in favour of sustainable development.

17. **The RTPI therefore supports the BPF's proposed amendment to Clause 47.**

Community Right to Challenge

18. Chapter 3 of Part 4 allows relevant bodies to present:
an expression of interest in providing or assisting in providing a relevant service on behalf of the authority

The RTPI's Position

19. The DCLG consultation document on the Community Right to Challenge³ states that:
The Bill applies the Community Right to Challenge only to services which are provided by, or on behalf of, relevant authorities. It does not apply to functions of relevant authorities. Generally speaking, a function is a duty or power that requires decision-making by the responsible person or body, whereas a service does not. For example, decisions on planning applications would be a function
and that:
there may be a case for exclusion where there is a need to retain impartiality, such as advice given before and after planning applications are made to local planning authorities.
20. The RTPI welcomes the CLG's clarification on this but considers that it does not go far enough. The need to retain impartiality applies equally – if not more so – to the preparation of statutory planning policy and to any policy guidance that will rightly inform a decision on a planning application. Planning is a front-line service whose customers are neighbourhoods and businesses. Any uncertainty caused by the separation of functions and the re-commissioning of services would run contrary to the objectives of the Right to Challenge and the coalition's wider Growth Agenda. The transfer of planning work to a relevant body risks generating a silo mentality, in which planning, whether development management, planning policy or both, becomes separated from related functions such as housing, licensing and environmental health. A planning service which is disjointed due to this type of restructuring also risks increasing uncertainty for developers.
21. **The RTPI, therefore, seeks further clarification that the operation of a local authority's planning service will be exempt from the community right to challenge.**

Assets of Community Value

22. Clause 74 (formerly Clause 71) requires that:
A local authority must maintain a list of land in its area that is land of community value

With Clause 77(3) (formerly Clause 74(3)) stating that an:
authority must accept [a community] nomination if the land nominated—

footnotes

³

DCLG (2011) *Proposals to introduce a Community Right to Challenge: Consultation paper*,
<http://www.communities.gov.uk/documents/localgovernment/pdf/1835810.pdf>

*(a) is in the authority's area, and
(b) is of community value.*

The RTPI's Position

23. The RTPI understands the reasoning behind this provision and welcomes moves both to safeguard local services and amenities and to allow communities to bring them into community ownership. The RTPI is concerned, however, that this provision may be used, on occasion, to frustrate the proper planning process by identifying a site as a community asset at a time when a proposal to develop that site is being made – or has been decided on. These provisions of the Bill need to be used in a positive way and the RTPI believes that this may best be done if land of community value is identified only through the process of preparing a local or neighbourhood development plan.
24. This would mean both that the identification of assets was done in the context of thinking about the future of an area and that land owners, potential developers and others would have a greater degree of certainty as to the status of sites.
25. **The RTPI believes that the Bill needs to be amended to require the identification of land of community value to be undertaken through the local and neighbourhood planning process.**

Community Right of Appeal

26. At Report Stage, Stephen Gilbert MP put forward an amendment (New Clause 4⁴) proposing a Community right of appeal.
27. The RTPI does not, in general, support a Community Right of Appeal as we believe that this could add a degree of uncertainty and the opportunity for further delay into a system which is already being changed to allow for even fuller potential involvement by local communities in shaping policy, proposing development and influencing planning decisions.
28. The Institute is therefore please to note that former New Clause 4 has not been carried forward into the amended Bill.

Contact the RTPI

If you require more detailed information or want to work with the RTPI on promoting improvements to the Bill, please contact the RTPI.

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Royal Town Planning Institute
The RTPI is a charity registered in England (262865) and Scotland (SC 037841)

footnotes

⁴ Hansard, 17th May 2011 Col. 254
<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/chan159.pdf>