

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 politicians 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 – particularly on the duty to co-operate – but strongly believe other parts remain fundamentally flawed.

RTPI Key Issues

2. The RTPI feels that there remain three key issues that need to be addressed in the Bill's passage through the House of Lords. In addition, we wish to acknowledge the improvements to the duty to cooperate in the amended Clause 95 (formerly Clause 90) and urge Peers to support it. More detailed briefings on all of the following issues can be accessed through www.rtpi.org.uk

(i) Financial considerations as a 'material consideration'

The Government's amendment to make financial considerations a material consideration (Clause 124, formerly New Clause 15) is deeply flawed and potentially very damaging to proper planning and contradicts recent assurances given by ministers. **The RTPI is calling for Clause 124 to be withdrawn**, or, if not withdrawn, very significantly amended.

(ii) National Planning Policy Framework (NPPF)

The NPPF needs to be on the face of the Bill if it is to be effective.

(iii) Neighbourhood Planning

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. Whilst some progress has been made in this area, **Government amendments did not deal with many of the key issues.**

Financial considerations as a material consideration

3. The Government tabled an amendment to introduce a new clause on material considerations (introduced as New Clause 15, now Clause 124) which states: 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;*

Richard Summers, President of the RTPI said: *"We hope the Government takes the opportunity to make further improvements to the Localism Bill in the Lords. The very late tabling of an amendment to require a local planning authority to make local finance considerations a material consideration in planning decisions has caused widespread concern and is set to dominate the debate. We are arguing very strongly for controversial Clause 124 to be withdrawn as a planning application should be determined on its merits. The proposed change will only increase public suspicion and cynicism about the planning process".*

4. Current government guidance states (ODPM Circular 05/2005 Planning Obligations): *'the fundamental principle that planning permission may not be bought or sold'*. 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.
5. Indeed, this was the current Government's clear stance just four 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.
6. **The RTPI believes that the Government position stated just four months ago is the correct one and will continue to press strongly for this clause to be withdrawn or very significantly amended.**

For more information see [“RTPI Briefing on the Localism Bill and Local Financial Considerations”](#) available at www.rtpi.org.uk

The National Planning Policy Framework

7. **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).
8. 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.
9. The RTPI has considered three approaches to embedding the proposed NPPF in statute. 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.*
- (5) *The requirements in (4) apply to any amendments to the National Planning Policy Framework.*

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

See the more detailed ["RTPI's position paper on why the proposed NPPF must be in the Localism Bill"](#) at www.rtpi.org.uk

Neighbourhood Planning

11. 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 the approved plan in the planning of their areas.
12. The RTPI feels that **a number of the new provisions in the Government's approved Report stage amendments did improve the system of neighbourhood planning** and we welcome, for example, a greater emphasis on the involvement of local workers and councillors, further moves to ensure that neighbourhood forums reflect the character of the neighbourhood as a whole and the removal of the restrictions on who may be an independent examiner.
13. The RTPI also notes that **there are options available for meaningful neighbourhood planning that could be undertaken without the need for an additional layer of legislation** and the RTPI has prepared a guide for communities on working within existing legislation to achieve many of the same outcomes as would neighbourhood planning.
14. 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 for those wishing to adopt this approach. The RTPI has drafted amendments to achieve all these three objectives.
15. **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.

16. **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.

17. **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.

For more information on the RTPI's three suggested amendments see ["RTPI Briefing on the Localism Bill and Neighbourhood Planning"](#); for more information about how the tools in the current system can empower communities, see ["Existing tools for Neighbourhood Planning"](#) at www.rtpi.org.uk

The Duty to Co-operate

18. Much of the RTPI's work during the passage of the Bill through the Commons has focused on the Duty to Co-operate (Clause 95, formerly Clause 90).
19. The Commons has now agreed a Government amendment to the Duty to Co-operate, now expressed in Clause 95. **The RTPI welcomes the progress that has made on developing this key clause in the Bill and we feel that the agreed amendment incorporates, and takes forward, the thinking behind the RTPI's original amendment.** 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. **The RTPI will continue the debate on strategic planning, including considering any further improvements to Clause 95 if necessary, but considers that real progress has been made**

on this Clause. The RTPI is now exploring how the Costs regime can support the operation of the Duty to Co-operate in practice.

For more information see the *RTPI Briefing published during the House of Commons Committee stage at:*

www.rtpi.org.uk/download/11140/110214-RTPI-proposed-amendments-clause-90.pdf

RTPI's Other Concerns

20. The RTPI also has **a number of other concerns** about the Bill:

Other Planning Provisions in the Bill

21. This covers:

- Local development schemes [Clause 96, formerly Clause 91]
The RTPI welcomes increased flexibility in preparation and review of schemes, but provisions could go further by replacing requirement to prepare a scheme with a duty to provide up-to-date information on the status, coverage and future preparation of plans, including neighbourhood plans.
- Adoption & withdrawal of development plan documents [Clause 97, formerly Clause 92]
The RTPI generally supports the provisions but shares the Law Society's concerns on the interpretation of "non-material changes", and will also be examining the potential consequences of allowing councils to withdraw plans after public examination.
- Local development: monitoring reports [Clause 98, formerly Clause 93];
The RTPI welcomes increased flexibility, and the emphasis on reports measuring councils' success in delivering their own objectives, but the consequent loss of consistency in comparable data over time and between areas may be harmful.
- Consultation before applying for planning permission [Clause 107, formerly Clause 102]
While the RTPI strongly supports the practice of pre-application consultation, experience shows that legislating for good practice can detract from its benefits, leading to a "tick box" approach; alternative measures to encourage consultation should be explored.

For more information see the ["RTPI Briefing on other planning provisions"](#) on our website www.rtpi.org.uk

Non-Planning Provisions in the Bill

22. This covers:

- Pre-determination [Clause 14, formerly Clause 13]
The RTPI considers that this needs re-drafting as the current wording could lead to legal challenge and continuing confusion.
- EU Fines [Clauses 31-37, formerly Clauses 30-34]
The RTPI supports the LGA in calling for this to be withdrawn from the Bill pending discussion with the sector.
- Local Referendums [Clauses 42-58, formerly Clauses 39-55]
The RTPI supports the British Property Federation in seeking an amendment to make planning decisions one of the proscribed issues on which referendums can be held.
- Community Right to Challenge [Clauses 68-73, formerly Clauses 66-70]
The RTPI seeks clarification from the Government that the right to challenge cannot be exercised in respect of drafting statutory policy, as well as deciding on planning applications.
- Assets of Community Value [Clauses 74-93, formerly Clauses 71-88]
The RTPI is concerned that these provisions may be used to stymie beneficial development.
- Community Right of Appeal [former New Clause 4]
The RTPI believes that, if this is put down as an amendment, it should be voted against.

For more information see the [“RTPI Briefing on non-planning provisions”](#) in the Localism Bill on our website www.rtpi.org.uk

Enforcement

23. This covers:

- Retrospective planning permission [Clause 108, formerly Clause 103]
The RTPI suggests that any developer who has carried out unauthorised development should be compelled to submit a retrospective planning application.
- Time limits for enforcing concealed breaches of planning control [Clause 109, formerly Clause 104]
A local planning authority should be able to take enforcement action within the normal periods with the period calculated from the time when the authority was aware of the breach.

- Planning offences: time limits and penalties [Clause 110, formerly Clause 105]
Whilst the raising of the penalty level for failing to comply with a Breach of Condition Notice is welcomed by the RTPI, it should be higher.
- Proposed new Clause: Notification of initiation of development
The RTPI considers that there is the need to introduce a notice informing the local planning authority of the start of a development. Checks can then be made on pre-commencement conditions and that development is proceeding in accordance with approved plans.

For more information see [“RTPI Briefing on Localism Bill’s enforcement provisions”](#) at www.rtpi.org.uk

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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