

## **The RTPI and the Localism Bill**

1. This Briefing on the Localism Bill from the Royal Town Planning Institute (RTPI) was written following the House of Commons Report Stage and Third Reading on 17<sup>th</sup> and 18<sup>th</sup> May and before the Localism Bill enters the House of Lords for its Second Reading on 7<sup>th</sup> June 2011. It was updated on 29<sup>th</sup> 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 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. New Clause 15 on financial matters as planning considerations must be withdrawn because, as drafted, it represents a fundamental and potentially very damaging shift in the basis on which planning decisions should be made;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’ related 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 the all but the first of these concerns. The proposed amendments set out in this briefing paper address the fourth of these concerns. Other post-Third Reading Briefing Notes will be placed on the RTPI website ([www.rtpi.org.uk](http://www.rtpi.org.uk)).

## The Enforcement Provisions of the Bill

6. The Localism Bill contains four clauses dealing with enforcement:
  - 108 (formerly 103) Retrospective planning permission;
  - 109 (formerly 104) Time limits for enforcing concealed breaches of planning control;
  - 110 (formerly 105) Planning offences: time limits and penalties;
  - 111 (formerly 106) Powers in relation to unauthorised advertisements and to defacement of premises.
7. This paper deals with each of these in turn and has been prepared in close collaboration with the National Association for Planning Enforcement (NAPE). It provides an explanation of each clause taken from the Bill's Explanatory Notes; commenting on it; and setting out the RTPI's position including any suggested amendments. It then sets out a proposed new Clause dealing with start notices.

### Clause 108: Retrospective planning permission

Subsection (2) inserts new section 70C into the Town and Country Planning Act 1990 – it provides that a LPA may decline to determine a retrospective planning application if an enforcement notice has been issued in relation to any part of the development.

Subsection (4) amends section 174 of the TCPA to provide that if a retrospective planning application has been made, but an enforcement notice has been issued before the time for making a decision has expired, the developer cannot then appeal against the enforcement notice on the ground in section 174(2)(a) (that planning permission ought to be granted – “ground (a)”).

Subsections (5) and (6) amend section 177 of the TCPA such that the Secretary of State may only grant planning permission when allowing an enforcement appeal if the appeal was made under ground (a) and that only ground (a) appeals result in a deemed application for planning permission.

### The RTPI View

8. Whilst the purpose of this clause is on face value good it will not significantly shorten the time scale for inappropriate unauthorised development to be removed.
9. Whilst the clause seeks to prevent developers running a ground (a) appeal and a retrospective planning application at the same time, it should be borne in mind that, in the event that a retrospective application is submitted closely followed by an enforcement notice, a right of appeal against the refusal of planning permission will still exist.
10. If the intention is to retain this right of appeal then any appeal should be submitted including the appellants statement within 28 days of the date of refusal. The appeal should then be automatically converted to a ground (a) enforcement appeal so that in essence only one appeal is running.

11. Clause 108 still fails to deal with developers who carry out unauthorised development and who refuse to submit a retrospective planning application to regularise such development. Where the development is inappropriate it can be dealt with by a notice, however where it would not be expedient to take formal action there is no other sanction. This causes problems especially when neighbours have “done it right” and applied for permission and they see it as the developer “cocking a snook” at the system and getting away with it.
12. The planning system should be an open and transparent method of regulating development. Many of those people who decide to circumvent the system avoid the public consultation process. This must be contrary to the aims of localism. In addition it puts an onus on the local authority to investigate and evaluate the proposal at authorities’ expense when the developer is making the gain. As one planning enforcement officer affirmed “What is important is that the public should be able to have confidence that the system doesn’t allow the rogue developers to continue to take advantage.”
13. **The RTPI suggests that any developer who has carried out unauthorised development should be compelled to submit a retrospective planning application with suitable sanctions by way of a fixed penalty notice for double the appropriate fee if they fail to do so and that this amendment should be incorporated into the Localism Bill.**
14. This proposed amendment is based on Section 33A of the Town and Country Planning (Scotland) Act 1997 as amended by The Planning etc. (Scotland) Act 2006.

***Proposed amendment: Notice requiring application for planning permission for development already carried out***

*Where there is a breach of planning control the planning authority must issue a notice—*

- (a) requiring the owner of the land in, on, over or under which the development has been carried out to make an application to them for planning permission for the development,*
- (b) describing the development in a way that is sufficient to identify it,*
- (c) specifying a date by which the application is to be made.*

**Other Bodies**

15. It should be noted that the Law Society is lobbying to have subsection (4) deleted in order to preserve the right for a person to appeal against a planning enforcement notice on the grounds that planning permission ought to be granted. The Society considers this amendment to be unnecessary as the enforcement system is working satisfactorily and does not need changing. At present a retrospective planning application and an enforcement appeal can be dealt with at the same hearing. The change could give rise to additional costs both for local authorities and the private sector, it could give rise to unnecessary litigation and it will cause uncertainty in the property markets.

## Clause 109: Time limits for enforcing concealed breaches of planning control

Clause 109(1) allows enforcement action to be taken against a breach of planning control when the time limits for taking action have expired and the breach has been concealed.

In order to use these powers, the LPA must apply to the magistrates' Court for a "planning enforcement order" within six months of the day on which the apparent breach came to the authority's knowledge. If an order is granted, the authority has one year to take enforcement action. The authority can also apply for a planning enforcement order before the time limits for taking action have expired, as the expiry date may be in dispute.

A magistrates' court may make the order only if satisfied, on the balance of probabilities, that a person's actions (including representations or inaction) have resulted in, or contributed to, full or partial concealment of the apparent breach.

### The RTPI View

16. The objective of this clause is generally welcomed – although it is considered to be a sledge hammer to crack a relatively small nut. However, we believe that the process that has been chosen has a significant disadvantage and is unnecessarily complicated. The nature of development where there are concealed breaches often leads to debate whether development has taken place. An application to the magistrates will necessarily involve them in making a decision on that matter, which is a highly technical area involving mixed questions of fact and law. Neither magistrates nor their advisers – in contrast to the Planning Inspectorate – are equipped to make such decisions.
17. We suggest that an alternative provision would be for the local planning authority to be enabled to take enforcement action within the normal enforcement periods, but with such period to be calculated from the time when the authority became aware of the breach. On appeal against a notice, the local planning authority would have to demonstrate the date on which they became aware of the breach. This would allow all the issues to be considered in the appropriate forum.
18. There is also the need to clarify if unauthorised development which is not concealed still becomes lawful after 4/10 years and if an application for a Lawful Development Certificate can still be made.

### Other Bodies

19. The Law Society is calling for Clause 109 to be deleted as it will lead to uncertainty which could have unintended consequences for residential and commercial property markets. It is considered that the Law Society's stance derives as much from the Clause's effect on conveyancing as it does from an understandable concern for certainty in planning.
20. **Whilst recognising the Law Society's position, the RTPI does not want to propose any amendments to this Clause but will wish to work with the DCLG in framing much needed guidance on the issues raised above.**

## Clause 110: Planning offences: time limits and penalties

Clause 110 makes amendments to a number of planning-related offences. Subsection (2) raises the maximum penalty from level 3 on the standard scale (£1,000) to level 4 (£2,500) for failure to comply with a breach of condition notice under section 187A of the Town and Country Planning Act 1990.

Most offences prosecuted in the Magistrates' Court must be brought within six months of commission. In some cases it is not clear when an offence was committed, which can lead to difficulties in bringing forward a prosecution.

Subsections (3) and (4) provide that prosecution for the offences of lopping or damaging a protected tree under section 210(4), and of contravening regulations on the control of advertisements in section 224(3) of the Town and Country Planning Act 1990, may be brought within six months of sufficient evidence of the offence coming to the prosecutor's knowledge (but no more than three years after the offence was committed).

### The RTPI View

21. Whilst the raising of the penalty level for failing to comply with a Breach of Condition Notice is welcomed it should be higher than £2,500 (suggest minimum of level 5 £5,000) as the higher penalty will result in Magistrates taking the matter more seriously. Magistrates following a conviction for this offence need the power to order compliance by means of abatement procedures similar to those under Public Health Act of 1936.
22. As an alternative the LPA should be given powers to take such other action as is required to deal with the breach of condition i.e. default/direct action.

### Proposed amended **Clause 110 Planning offences: time limits and penalties**

*(1) The Town and Country Planning Act 1990 is amended as follows.*

*(2) In section 187A(12) (maximum penalty of level 3 on standard scale for offence of being in breach of a breach of condition notice) for "fine not exceeding level 3 on the standard scale" substitute "fine—*

*(a) not exceeding level 5 on the standard scale if the land is in England;*

*(b) not exceeding level 4 on the standard scale if the land is in Wales".*

[clause continues]

## Clause 111: Powers in relation to unauthorised advertisements

New section 225A allows a LPA to remove any display structure in their area which, in their opinion, is used for the display of illegal advertisements. New section 225B allows local planning authorities to take action against persistent fly-posting on 'surfaces'. New section 225D modifies the notice procedure for statutory undertakers.

## Clause 111: Powers in relation to defacement of premises

New section 225E allows local planning authorities to take action against signs (graffiti) which it considers to be detrimental to the amenity of the area or offensive. The authority may serve a notice on the occupier of the premises requiring them to remove or obliterate the sign allowing at least 15 days to comply. If there appears to be no occupier, the authority may fix the notice to the surface. If action is not taken within the time specified, the authority may take the action itself and recover its expenses from the person who should have done it.

New section 225J in Chapter 5 modifies the provisions to enter land and do works to remove hoardings, fly-posters or graffiti so far as they apply to the operational land of transport statutory undertakers. This clause replaces provisions of certain London Local Authorities Acts that apply only in relation to London with provisions that apply throughout England.

### **The RTPI View**

23. This clause is generally welcomed.

### **Proposed new Clause: Notification of initiation of development**

24. We consider that there is the need to introduce a notice informing the local planning authority of the start of a development.
25. The introduction of such a notice would ensure that checks can then be made on pre-commencement conditions and, subsequently, that development is proceeding in accordance with approved plans. This should not be particularly onerous or costly.
26. It is a mandatory requirement for developers to give 48 hours notice of intention to commence work under the building regulations. However as Building Control is no longer exclusively a local authority function people have the option of using private building control firms (Approved Inspectors), so local authorities are not always in possession of the relevant information.
27. Even if a developer is going to use a Council Building Inspector, in a number of cases the development can commence by the actions of the developer long before building control notice is required.
28. It is also important to note that not all development will actually require building control; for example, a lot of changes of use will fall into this category. Therefore the proposed notification of initiation of development should be stand alone.
29. Failure to comply with this Clause could be both an offence, punishable by a fine through the Courts and could, it is suggested, give rise to a stop notice under Part 4 of Planning and Compulsory Purchase Act 2004.

#### **Proposed new Clause: Notification of initiation of development**

*(1) A person who intends to carry out development for which express planning permission has been granted (or a local development order, neighbourhood development order, or community right to build order) has been made must as soon as practicable after deciding on a date on which to initiate the development, and in any event 21 days before commencing the development, give notice to the local planning authority as to that date.*

*(2) In granting express planning permission or making a community right to build order for the carrying out of any development of land, the notice shall direct the attention of the applicant to requirements of subsection (1) and of s171A of the Act with regard to breaches of planning control*

#### **Display of notice while development is carried out**

*(1) A person carrying out development of a prescribed class must until the development is completed display a notice containing prescribing information.*

*(2) The Secretary of State may by order or regulations make provision as to-*

(a) *The form of the notice required by subsection (1), and*

(b) *Where such notice is to be displayed*

**Amendment to s171A – Expressions used in connection with enforcement**

(1) *In section s171A of the Act after para (1)(b) insert:*

*“or*

(c) *initiating development without giving notice in accordance with section X of this Act,*  
*or*

(d) *carrying out development without displaying a notice in accordance with s XX of*  
*this Act,*

*constitutes a breach of planning control.*

## 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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