

### Using the costs regime to strengthen the duty to co-operate

8 June 2011

#### The RTPI and the Localism Bill

1. 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.

2. 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. 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.

3. This briefing is the first in a series looking at issues that impact on the successful implementation of the Bill when enacted.

#### The Duty to Co-operate

4. Much of the RTPI's work during the passage of the Bill to date has focused on the Duty to Co-operate (Clause 95, formerly 90). Since publishing its own amendment, the RTPI has worked with the Government and with other key stakeholders to develop the RTPI's approach and to incorporate the thinking behind amendments put forward by other bodies. The Government published its amendment to the Duty to Co-operate which was passed by the House of Commons. The RTPI welcomes the progress that has been made on developing this key clause in the Bill and felt that the published amendment incorporated and took forward the thinking behind the RTPI's original amendment<sup>1</sup>. We appreciate the willingness of Government to engage with the RTPI and others on this issue. We recognise that this amendment did not go as far as other interests may wish, but 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;
- 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

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<sup>1</sup> Para 1 Introduction to Circular 3/09 "Costs Awards in Appeals and Other Planning Proceedings".

- assessment of the 'soundness' of Local Development Framework;
- 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.

### **Making the Duty to Co-operate bite – consequential actions**

5. The RTPI is committed to continue the debate on strategic planning and making the Duty to Co-operate really work. We believe that the next step in making the Duty to Co-operate meaningful could be done through secondary legislation by bringing the development plan preparation process within the costs process and amending Circular 3/09 "Costs Awards in Appeals and Other Planning Proceedings" to make clear how the duty to co-operate will be supported through the application of the costs regime.

### **Encouraging co-operation**

6. Further work is required to make the Duty to Co-operate bite fully and effectively on all relevant parties. The Duty to Co-operate will require Local Planning Authorities preparing plans to seek to co-operate with those on whom they are reliant to ensure that their plan is deliverable, be that statutory bodies or neighbouring authorities. For example a council with limited options for accommodating the growth required to meet an identified need will have to work with neighbouring LAs to ensure that the need generated in the relevant housing market area can be met within that area. If it fails to do so it risks a finding that its plan is unsound.

7. However, while the proposing LPA may have endeavoured to co-operate, the intended partner delivery agency or neighbouring authority may fail to co-operate thus preventing the proposing LPA's plan from being found sound. This has occurred recently with the Stevenage Core Strategy being found unsound because a neighbouring authority refused to accept the 9,500 homes planned to be built as an urban extension to the west and north of Stevenage. This has left Stevenage in an uncertain position leading to delay in their ability to deliver their strategy.

8. As it stands, the main sanctions against failure to co-operate are through (a) the assessment of soundness of a development plan that has been prepared in the absence of co-operation, and (b) where a non-co-operating authority is not preparing a plan, then the proposed presumption in favour of sustainable development could apply in determining applications for planning proposals that address cross-boundary issues.

### **The Costs regime**

9. A failure to co-operate may not always be sanctionable through the assessment of soundness or through the presumption in favour of sustainable development. An alternative mechanism in the planning system which can be used to provide a sanction to those who refuse to co-operate without good reason is the Costs regime, which does not currently apply to the Development Plan process.

10. Circular 3/09 'Costs awards in appeals and other planning proceedings' *provides updated guidance on the award of costs in England in proceedings under the Planning Acts. The costs awards regime seeks to increase the discipline of parties when taking action within the planning*

*system, through financial consequences for those parties who have behaved unreasonably and have caused unnecessary or wasted expense in the process. A party may be ordered to meet the costs of another party, wholly or in part, on specific application by the aggrieved party.*

*Section 250 (5) of the Local Government Act 1972 enables the Secretary of State to make "orders as to the costs of the parties at the inquiry and as to the parties by whom the costs are to be paid". This power is applied to various planning proceedings by sections 320, 322, 322A of, and Schedule 6 to, the Town and Country Planning Act 1990.<sup>3</sup> The sections refer to the powers of the Secretary of State to "cause a local inquiry to be held for the purpose of the exercise of any of his functions under the provisions of the Act" (s320); s322 makes provision for costs to be awarded in cases *which do not give rise to a local inquiry*. Thus costs can be awarded in cases dealt with by written representations cases.*

11. Para B4 sets out examples of 'unreasonable behaviour' and includes "*resistance to or lack of co-operation with the other party in providing information, discussing the appeal or in responding to a planning contravention notice, thereby extending the duration of the appeal and associated expense*". The underlining highlights a further 'hook' for making the Duty to Co-operate bite through the costs regime as it is consistent with current practice on appeals.

## Conclusion

12. The RTPI believes the next step in making the Duty to Co-operate meaningful can be achieved (through secondary legislation) by bringing the development plan preparation process within the costs process and amendments to the Costs Circular 3/09 to make clear how the duty to co-operate will be supported through the application of the costs regime.

Royal Town Planning Institute

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

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<sup>2</sup> Para F1 Part F *ibid*