

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 more effective. The RTPI very much welcomes the Bill placing planning at the heart of the localism agenda.
2. We congratulate Ministers for working to improve parts of the Bill. In particular we welcome the progress made on:
 - The duty to co-operate
 - Neighbourhood Forums and
 - Aspects of Neighbourhood Planning.However, we believe that other parts remain either fundamentally flawed or which can be improved to make the legislation workable. The RTPI remains committed to holding constructive discussions with Government but, failing this will continue to press for amendments to be made.

RTPI Key Issues

3. The RTPI feels that there remain four key issues that need to be addressed in the Bill's passage through the House of Lords. These are:
 - Financial considerations as a material consideration [Clause 130];
 - The National Planning Policy Framework (NPPF);
 - Transitional Arrangements;
 - Proposed new Clause: Notification of initiation of development.
4. This RTPI Briefing Note looks at these four key issues and recommends amendments to address these. It also highlights where the RTPI is supporting the amendments promoted by other bodies and by the Government.

Contact the RTPI

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

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Financial considerations as a material consideration [Clause 130]

6. **The RTPI will continue to press strongly for this clause to be withdrawn or very significantly amended. We believe that, despite the assurances given in both Houses, the clause as worded will lead to uncertainty and to legal challenge.**

Background

7. At Report Stage on the Localism Bill (17th May 2011) the House of Commons agreed an amendment to introduce a new Clause (124) which states that:
Local planning authorities are to *have regard to material considerations in dealing with applications including any local finance considerations, so far as material to the application.*
8. The RTPI believes that this Clause raises four basic issues for planning. These are summarised below:
 - Perceived threats to the probity of planning;
*A key principle of planning has been that applications are decided on their planning merits – which can already include specific financial considerations – led by the development plan for the area. Financial considerations have long been taken into account where funding is used **to make an otherwise unacceptable application acceptable in planning terms.** The RTPI will resist any legislation that could be read to imply that financial inducements that are not specifically to be used to make a development acceptable in planning terms can be taken into account when deciding on an otherwise unacceptable application. Planning permissions must never be perceived to be ‘bought and sold’.*
 - The primacy of the development plan in guiding decisions on planning applications.
The principle that the development plan for an area is the prime determinant for a planning decision was made explicit in 2004. The inclusion of another specified statutory material consideration could be seen to water down the primacy of the plan and would be a fundamental change to the planning system.
 - The definition of a ‘material consideration’;
Material considerations have been defined through case law – and not in statute - since 1947. A definition in statute will lead to further legal challenge and thus delay.
 - How the Government’s incentives are to influence planning decisions;
The RTPI recognises that the use of incentives to stimulate development is at the heart of the Government’s approach to growth. However, we firmly believe that the point at which incentives should affect policies and cultures is when local authorities and communities are preparing plans for their areas – not at the point of deciding on the individual applications that deliver that plan.
9. The RTPI believes that the Government does understand these points. The Minister of State for Decentralisation has stated that the Clause does not change the law in any way but is an incidental measure for clarification [*Hansard* 17 May 2011 Cols. 270, 271] and Earl Attlee explained Government thinking on materiality [*Lords Hansard* 20 July 2011 Col. 1421]. The RTPI does not believe that the Clause achieves this aim and, therefore, that it needs to be withdrawn. **Guidance is required rather than legislation and the RTPI would be pleased to assist the Government in framing that guidance.**

Proposed amendment

10. For this reason, the RTPI supports an amendment that the Clause does not stand as part of the Bill.

The National Planning Policy Framework (NPPF)

11. The RTPI firmly believes that the current robust debate on NPPF shows that it must be subject to Parliamentary debate and approval and that the NPPF needs to be subject to a Strategic Environmental Assessment and that these requirements need to be embedded in legislation. The current debate about the content of the NPPF only serves to strengthen this view.

Background

12. As it stands, the Localism Bill does not contain any Clauses or references relating to the National Planning Policy Framework (NPPF). There are three main reasons why the NPPF needs to be referenced in the Bill:
 - It would strengthen the effectiveness of this document if it were specifically linked to the purposes of planning – to achieve sustainable development and to address the mitigation of, and adaptation to, climate change;
 - A statutory basis should be used to commit successive Governments to seek the approval of Parliament for this key document;
 - It is clear from the current very robust debate about the NPPF that the issues it raises and the policies it promotes are seen to be of significant public interest. Such fundamental changes to the planning system do require a statutory basis and the ability of Parliament to approve them.

The Proposed Amendment

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. and—*
 - (a) the consideration period for the statement has expired without the House of Commons resolving during that period that the statement should not be proceeded with, or*
 - (b) the statement has been approved by resolution of the House of Commons—*
 - (i) after being laid before Parliament, and*
 - (ii) before the end of the consideration period.*
- (5) *The requirements in (4) apply to any amendments to the National Planning Policy Framework.*

Transitional Arrangements

13. The changes to the planning system introduced both in the Localism Bill and through, for example, the publication of the draft National Planning Policy Framework are far reaching and will significantly affect the operation of the planning system. They are, however, being introduced without any period in which local authorities, the public and the development industry can learn to work with the new regime and implement it in the most effective way. The RTPI recognises that these changes form a part of the Government's core reforms to the planning system. We have worked positively with Government to strengthen other provision in the Bill to provide a strategic planning function and to improve the NPPF
14. The RTPI has two main concerns about the lack of transition arrangements.
15. First, the RTPI is concerned that the coming into force of the NPPF may render even those Local Plans which have already been adopted as being ineffectual. The draft NPPF suggests that Local Planning Authorities should seek a Certificate of Conformity with the NPPF for their local plans. In the absence of this, it is much more likely that the presumption in favour of sustainable development, which is currently a contested approach, will apply. The RTPI suggests that, whilst it is right that Local Plans and development decisions should have regard to the NPPF, it should be the responsibility of local authorities to decide whether their plans are in general conformity through a democratic process. This should not be onerous and the amendment suggests that an expedited process for doing this should be developed. However the RTPI is aware that a review of local plans and a process of modification, however expedited, will place an additional resource burden on local authorities and urges the Government to take this into account both in devising such a process and in decisions that impact on the resourcing of the planning system. Proposed Amendment 1 deals with this issue.
16. Second, the RTPI is concerned that both the abolition of Regional Spatial Strategies (RSS) and the condensing of existing national planning policy into the proposed National Planning Policy Framework (NPPF) could lead to a policy vacuum at local level. When RSS are abolished, one half of the 'development plan' as defined in the 2004 Planning and Compulsory Purchase Act will be lost. This will mean that those local planning authorities that followed specific government guidance (Para 4.30 of Planning Policy Statement 12) and relied on particular national or RSS policies but did not repeat them in their LDF will be left with a potential policy vacuum when implementing their plans. This means that otherwise perfectly sound LDFs which followed this advice may be left with significant gaps once the Localism Bill is enacted.
17. It is recognised that some of the policy content from RSS may be imported into the National Planning Policy Framework but, by its nature, this short and focused document may not have the directly local applicability that is required to provide a strong policy basis for decisions. Proposed Amendment 2 deals with this issue.

Transitional Arrangements - Proposed Amendment 1

18. The amendment below is designed to:
 - Require local planning authorities to review their plans following the issuing of the NPPF and the abolition of the RSSs;
 - Allow for them to bring forward modifications to plans as a result of that review;
 - Establish an interim period within which that review must take place;
 - Allow for the Secretary of State to establish an expedited process for dealing with modifications arising from this review, while protecting the right of the public to influence the outcomes of the review;

- Afford some protection for existing adopted local plans against undue challenge as to their conformity with the NPPF;
- Allow a maximum of three years for the interim period – the period agreed for the transition arrangements contained in the 2004 Act;
- Allow for provisions to be made to require the completion of any plans not yet adopted after the completion of the interim period.

Amend Sec. 26 of the Planning and Compulsory Purchase Act 2004

26 Revision of Local Development Documents

- (8) *Within an interim period after the occurrence of a relevant event—*
- (a) *the authority must review every local development document in the light of that event*
 - (b) *if they think that any modifications of the document are required in consequence of the review they must prepare a revised document containing the modifications*
- (9) *The following are relevant events—*
- (a) *the issuing of any consolidated guidance to which a local planning authority must have regard under Sec. 19(2) of the 2004 Planning and Compulsory Purchase Act;*
 - (b) *the coming into effect of the abolition of Regional Spatial Strategies under [Sec.97 of the 2011 Localism Act].*
- (10) *During this interim period, local development documents adopted under Sec. 23 of the 2004 Planning and Compulsory Purchase Act shall be regarded by the Secretary of State as being in general conformity with consolidated guidance as referred to in Clause 26 (9)(a)*
- (11) *The Secretary of State may by regulations make provision in connection with the exercise by any person of functions under this Clause.*
- (12) *The regulations may in particular make provision as to an expedited procedure including -*
- (a) *requirements about the giving of appropriate notice and publicity to any document made under this Clause;*
 - (b) *requirements about appropriate inspection by the public of any document made under this Clause;*
 - (c) *the nature and extent of appropriate consultation with and participation by the public in any document made under this Clause;*
 - (d) *the making of appropriate representations about any document made under this Clause;*
 - (e) *the appropriate procedures to be adopted for the consideration of any such representations;*
- (13) *The regulations may in particular make provision as to –*
- (a) *the determination of the time at which the interim period in this Clause may cease, with that time being not less than three years from the coming into force of this Clause,*
 - (b) *provisions to be made for the completion of any local development plans documents not adopted under Sec. 23 of the 2004 Planning and Compulsory Purchase Act within the interim period.*

Transitional Arrangements - Proposed Amendment 2

19. The amendment below is designed to provide for the continuation of only those policies that have been specified in a local plan that was submitted to the Secretary of State before the enactment of the Localism Bill and the coming into force of the Localism Bill. It is designed to be time limited for a maximum of three years – the period agreed for the transition arrangements contained in the 2004 Act.
20. After subsection (3) in Clause 94 (page 71, line 40) – Abolition of Regional Strategies insert:
- (3A) *Subsection (3) shall not apply to those policies in an approved regional strategy that have been specifically referred to as part of the policy content of a Local Development Framework submitted under Section 20(1) of the Planning & Compulsory Purchase Act 2004 in advance of the coming into force of this Section.*
- (3B) *Subsection 3A shall apply until whichever is the earlier of—*

- (a) the end of the period of three years;
- (b) the day when in relation to a policy covered by subsection (3A), a new policy which expressly replaces it is adopted or approved.

Proposed new Clause: Notification of initiation of development

21. The RTPI considers that there is the need to introduce a notice informing the local planning authority of the start of a development. 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.
22. It is already 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. 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.
23. 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. 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.
24. In response to the debate at Lords Committee stage as to the utility of such a provision, the RTPI and the National Association of Planning Enforcement (NAPE) undertook a survey of NAPE members - 542 people. They were asked whether their authority would use this provision, and whether they had any comments. (NB Not all NAPE members work in local authorities, but it was not possible to separate them out in the email list) There were 143 respondents (response rate 26%) – plus 5 comments by email - a total of 148 (response rate 27%). 136 said they would use it (95.1%), 7 said they would not (4.9%) Many NAPE members added comments and the common themes were that the amendment would provide transparency to the enforcement process, it would speed up development in many instances allowing problems that arise to be nipped in the bud, and it would save local planning authorities time and money.

The 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.*

RTPI support for other amendments

The Duty to Co-operate [Clause 95]

25. The RTPI feels that the Government amendment incorporates the thinking behind the RTPI’s original amendment. The RTPI will continue the debate on strategic planning, including considering any further improvements to Clause 95 but considers that real progress has been made on this Clause.

The purpose of Neighbourhood Forums

26. The RTPI is extremely pleased that the Government have changed the purposes of Neighbourhood forums through its amendment 205ZA. This has the effect of requiring that even business led Forums, need to take a wider view of the well-being of their area. The RTPI, jointly with Civic Voice, argued strongly for this change though an amendment tabled at Committee Stage.

A Duty to Consult for Neighbourhood Forums

27. The RTPI is also extremely pleased that the Government has specified that the regulations to be issued relating to Neighbourhood Planning must specify arrangements for consultation before a neighbourhood development order is submitted. The RTPI has argued for a duty to consult being placed on those undertaking neighbourhood planning and this amendment goes a significant way to fulfilling this. **The RTPI is concerned, however, that the amendment only considers neighbourhood development orders and not neighbourhood development plans and will be seeking clarification on this.**

Climate Change

28. As a member of the Planning for Climate Change Coalition, the RTPI supports the amendment put forward by that Coalition to simply insert a requirement into the existing local plan survey requirements (Part 2 of the 2004 Planning and Compulsory Purchase Act) to ensure that explicit attention must be paid to gathering evidence on, for example, carbon emission.

Local Referendums [Clauses 42-59]

30. The RTPI notes the inclusion of the special cases in which referendums need not be required [48(4)(a)] and will seek assurance that the phrasing in this Clause is to refer to planning applications and plan making.

Other RTPI Issues

31. The RTPI considers that Neighbourhood Development Orders should only be brought forward through a Neighbourhood Plan except in very exceptional circumstances. It also believes that neighbourhood plans, and the referendums on them, could be used to express the community’s priorities for investment in their area with, for example, the possible funding arising out of CIL and the New Homes Bonus. The RTPI will be scrutinising the Neighbourhood Planning Regulations and any guidance issued by DCLG to ascertain whether the two points above are made explicit in these documents.
32. We consider that additional improvements can be made to other parts of the Bill and, while we are not pressing these as amendments, we can provide Briefings on the issues below:

- Community Right of Appeal [former New Clause 4]
- Pre-determination [Clause 14]
- Community Right to Challenge [Clauses 69-74]
- Assets of Community Value [Clauses 75-96]
- Local development schemes [Clause 99]
- Adoption & withdrawal of DPDs [Clause 100]
- Local development: monitoring reports [CI 101]
- Retrospective planning permission [Clause 111]
- Time limits for enforcing concealed breaches of planning control [Clause 112]
- Planning offences: time limits & penalties [CI 114]