

The RTPI and the Localism Bill

1. The Royal Town Planning Institute (RTPI) supports the objectives that underlie the Localism Bill and very much welcomes the Bill placing planning at the heart of the localism agenda.
2. We have been working with the Government, with politicians across all parties and in both Houses and with other non-governmental organisations to make the Bill more effective. We congratulate Communities and Local Government Ministers for working to improve parts of the Bill and for the constructive way in which they and their Department have engaged with a number of the concerns of the RTPI but the real tests of the Bill lie in its implementation and the resources devoted to the planning system that delivers it.
3. We feel that the Bill now returns to the House of Commons improved in a number of respects. There is however unfinished business which we highlight below. There are also issues that will need to be dealt with, in part, through guidance but which nevertheless may still lead to continuing uncertainty and legal challenge.
4. This RTPI Briefing covers both those amendments which the RTPI initiated and which, therefore, it urges Members to accept, and the unfinished business remaining, including, crucially, the need for clear transition arrangements to be made. **The RTPI is also concerned about two further issues related to the Bill. These are continuing Government activity on reform to the planning system and the need for Government produced, or endorsed, guidance on key aspects of the Bill.**

Further Reform to the Planning System

5. There is speculation, including in the media, that the Government and, in particular, HM Treasury, is preparing a 'bonfire of planning regulations' [*Newsnight* BBC2, 31.10.11]. The RTPI has always believed that there is room for improvement in the planning system but to undergo – or even to threaten to undergo – a further period of significant change after the Localism Bill has introduced the most significant changes to the planning system since 1947 would be hugely damaging to investor and developer confidence, to the trust of local communities in the new system and to the ability of the Government to achieve its own goals relating to growth a rebalanced economy, climate change and social cohesion.

The RTPI urges the Secretary of State to make an urgent statement setting out clearly whether or not the Government is to undertake a further round of significant reform of the planning system.

The need for Guidance

6. The RTPI recognises the need both to rationalise Government guidance on planning and to engage the planning sector to a far greater degree in preparing some of that guidance. As is seen below, however, there are some key aspects, such as the status of the NPPF, transition arrangements and the operation of Clause 142 on local financial considerations that require statutory guidance. Such guidance may well be prepared by the sector but unless the Government takes responsibility for contributing to the drafting of, and formally endorsing, key areas of guidance there will be significant confusion. The RTPI is already working with the CLG and a range of other bodies on this issue.

The RTPI urges the Secretary of State to make a statement on which of the key areas of policy and practice arising out of the Localism Bill and other reforms it will be issuing statutory guidance.

Improvements made to the Bill

The Duty to Co-operate [Clause 110]

7. The RTPI feels that the Government amendment passed at Third Reading in the Commons and unchanged in the House of Lords, incorporates the thinking behind the amendment that the RTPI's originally promoted at Commons Committee Stage. The RTPI will continue the debate on strategic planning and will support the development of effective practice but considers that real progress has been made on this Clause. We are recommending that the local plan regulations extend the Duty to Consult to include infrastructure providers that are vital to growth.

The purpose of Neighbourhood Forums

8. The RTPI is extremely pleased that the Government have changed the purposes of Neighbourhood Forums - in Schedule 9, Part 1, 61F(5)(a) - following the laying of an amendment promoted by the RTPI. This has the effect of requiring that all Neighbourhood Forums, including those led by business, need to take a wide view of the social, economic and environmental well-being of their area.

A Duty to Consult for Neighbourhood Forums

9. 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 plan or order is submitted [Schedule 10, Schedule 4B 4(3)]. 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.

Transitional Arrangements

10. The RTPI has been at the forefront of identifying the need for transition arrangements to be put in place and promoted two amendments in the House of Lords to set out the nature of these. The changes to the planning system introduced both in the Localism Bill and through other means, notably, the publication of the draft National Planning Policy Framework, are far reaching and will significantly affect the operation of the planning system. The RTPI recognises that these changes form a part of the Government's core reforms to the planning system and we have worked positively with Government to strengthen other provision in the Bill to provide a strategic planning function and to improve the NPPF. However, they are being introduced without any planned 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.
11. In particular, the RTPI is concerned that the coming into force of the NPPF may render those Local Plans which have already been adopted as being out of date and may also cause significant work on emerging plans to be wasted. 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. This should not be onerous and the amendment that the RTPI promoted suggested that an expedited process for doing this should be developed.

12. 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.
13. 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 NPPF could lead to a policy vacuum at local level. When RSS are abolished, part of the statutory '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.

The RTPI is very pleased that the Government has now accepted the need for transitional arrangements but urges the Government to make a statement at the earliest possible opportunity outlining the nature of those arrangements.

Unfinished Business

14. The RTPI feels that there remain two very important issues that remain to be fully addressed. These are:
 - Financial considerations as a material consideration;
 - The National Planning Policy Framework (NPPF);

Financial considerations as a material consideration [Clause 142]

15. The RTPI joined with others to press strongly for this Clause to be withdrawn or very significantly amended. The RTPI welcomes the fact that the Government has amended the Clause to seek to clarify that financial considerations should not have any weight over other considerations when applications are being decided. **However, we still believe that, despite the assurances given in both Houses, the Clause as worded will lead to uncertainty and to legal challenge.**
16. The RTPI still believes that this Clause still raises four basic issues for proper planning, for investment and for communities.
 - 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.

The National Planning Policy Framework (NPPF)

17. 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 Sustainability Appraisal and that these requirements needed to be embedded in legislation. The current debate about the content of the NPPF only serves to strengthen that view. A statutory basis would be used to commit successive Governments to seek the approval of Parliament for this key document
18. The RTPI regrets that the Government did not accept an amendment that sought to achieve this and to link specifically link the NPPF statutorily to the purposes of planning – to achieve sustainable development and to address the mitigation of, and adaptation to, climate change;
19. The RTPI is very fully engaged in the current debate and consultation on the NPPF including bringing different parties together to find common ground and identify issues and in giving oral evidence to the CLG Select Committee. We will continue this involvement and will be seeking further guidance on the status of the NPPF, notably in relation to the existing statutory primacy of the development plan and in relation to National Policy Statements under the 2008 Planning Act. We will also continue to press that the NPPF undergoes some form of sustainability impact assessment.

Proposed new Clause: Notification of initiation of development

20. The RTPI also put forward an amendment to introduce a notice informing the local planning authority of the start of a development. The introduction of such a notice would have ensured that checks could then be made on pre-commencement conditions and, subsequently, that development is proceeding in accordance with approved plans. This would not have been particularly onerous or costly. 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. There were 148 respondents (27%). 136 said they would use it (95.1%). The RTPI regrets the fact that the Government chose not to accept this amendment and will be working with NAPE and others to seek alternative ways of achieving this.

Contact the RTPI

21. If you require more detailed information or if you want to work with the RTPI on promoting the benefits of, and continuing improvement to, planning policies, practices and processes, please contact the RTPI:

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