

Introduction and Summary

1. The Royal Town Planning Institute (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.
2. The RTPI believes that much of what the Growth and Infrastructure Bill seeks to achieve could more elegantly be achieved without legislation, and that (tidying-up aside) the Bill risks not delivering the new growth and infrastructure intended.
3. Within this overall position, the RTPI is concerned about a number of clauses in the Bill:
 - Clause 1: Option to make planning applications directly to the Secretary of State;
 - Clause 4: Limiting the information that local planning authorities can require;
 - Clause 5: Modification or discharge of affordable housing requirements;
 - Clause 21: Bringing business and commercial projects under the Planning Act 2008 regime.
4. The remainder of this paper will outline the details of our concerns, along with highlighting the areas of the Bill that we support.

Clause 1: Option for make planning applications directly to the Secretary of State

5. The Government's proposals for judging poor performance were published in 22 November and as a member organisation we are still at the stage of canvassing our members on this matter. As a first principle we would expect to find that these additional powers for the Secretary of State, are never in fact exercised. We also think that at present the playing field is far from level. Just as in City Deals the Government is granting greater powers of decentralisation where good performance is achieved, we ask whether or not the best performing authorities should be receiving *greater* autonomy from central control.

Performance is not raised by metrics alone

6. Performance metrics serve a useful purpose in throwing up circumstances which require further investigation. But we consider that real service improvements tend, in recent experience with which CLG will be familiar, only to arise from focussed attention on

particular problems identified through deeper evaluation. We are concerned that focussing on a narrow metric risks generating unwelcome side effects. These could involve (with reference to the 22 November proposals) diverting resources into major applications when in fact some minor applications could be vital to SME growth. There could be pressure to make rapid decisions just within the time frame or to impose conditions on decisions to a greater extent than would be necessary in a well-negotiated permission. The government has argued that its proposed second measure “quality” as reflected in overturned appeals, would soon discourage this practice, but a well-performing planning system should not be encouraging appeals at all.

7. There is little in these proposals to incentivise good performance on pro-active engagement with prospective applicants to encourage the right applications to come forward in the right places; nothing regarding good elements of practice such as having single points of contact for applicants and reducing churn of staff. In straightened times if planning managers and local politicians are focussed on avoiding a designation of poor performance as narrowly defined they may take their eyes off the ball in relation to wider attributes of good performance.

International Comparisons

8. Comparison of the performance of planning authorities in England with competitor countries is instructive. The World Bank has carried out international comparisons measuring the ease of dealing with construction permits. This reveals that the UK is third among G8 countries for speed of approval.¹

| Country | Number of days |
|--------------------|----------------|
| United States | 27 |
| Germany | 97 |
| United Kingdom | 99 |
| Canada | 163 |
| France | 184 |
| Japan | 193 |
| Italy | 234 |
| Russian Federation | 344 |

Source World Bank “Doing Business” June 2012

Councils’ planning departments are working hard to help business

9. Councils are not simply improving their planning application processes; they are going all out to find out what customers want and providing it to them. The Regeneration Department of Walsall Council has undertaken a proactive initiative to provide a business-friendly planning service. The department identified the top 100 firms headquartered in the borough by turnover and employees. It is working through meeting

footnotes

1. ¹ Source: World Bank “Doing Business” report June 2012. The “Dealing with Construction Permits” topic records the procedures, time and cost required for a small to medium size business to obtain all the necessary approvals to build a simple commercial warehouse and connect it to water, sewerage and a fixed telephone line. The study includes all types of inspections and certificates needed before, during and after construction of the warehouse. To make the data comparable across 185 economies, the case study assumes that the warehouse is located in the peri-urban area of the largest business city, is not in a special economic or industrial zone and will be used for general storage activities.

them and has met 50 so far. At the meetings, staff ask firms what their needs are, and what their demands are going to be across the whole range of council services.

10. Specifically relating to planning, staff ask what growth plans does the company have, and asks about awareness of available grants to help. If the company has used the planning service in the past they are asked how was the experience, and what can the Council do to make it better. It has been found that many firms have an inaccurate perception of how difficult it is to obtain planning permission. Whilst the Council website lists 40 kinds of evidence which might be needed to accompany a planning application, by being in contact with good advisers from Council staff, rather than approaching the wrong advisors, applicants can be helped to compile just that which is really needed, and often less than they thought. This is important because these tend to be firms of 100-150 employees with so few management staff that board members have to pick up tasks like planning, which they have little time to focus on. Help from the Council to identify sites and make applications is really useful.
11. It was found that in Walsall 17 firms plan to either relocate or expand. The Council's aim is to cater for firms' needs within the borough so that they do not need to leave. They do this by identifying new plots of land which firms can move to, sometimes finding yet other firms wishing to vacate plots. This is evidence that planning is not an enemy of enterprise but instead a proactive process of orchestrating the best use of land to achieve economic growth and wider objectives.
12. **Plymouth City Council** Planning Services put in place a nationally-recognised pro-growth positive planning framework which seeks to maximise the delivery of a large number of development opportunities already allocated for development in 6 adopted Area Action Plans or already with the benefit of planning permission. In April 2011 the Council produced a 15-point Action Plan in response to the Coalition Government's Plan for Growth. Achievements by September 2011 included :
 - Prioritisation of all non-retail employment projects both at pre-application and application stage. Progress with these applications reviewed regularly by senior managers to ensure acceptable schemes are fast tracked
 - All SME employment generating projects have 6 week target
 - Plymouth Regeneration Forum meeting frequency increased to ensure planning in the city is as responsive as possible to the need of business
 - All 3 national decision-speed targets met in 2010-11 with 77% of majors determined in time, up 17%
 - All applications that have used the City's Development Enquiry Service monitored to ensure they are determined within the appropriate period
 - Plymouth Growth Board established to ensure effective business input into planning the City and its subregion

Space precludes description of many other Councils work to support growth.

Is decision speed the real problem?

13. Often the real solutions to growth lie in ensuring that government pulls together across the piece in order to enable growth *already permitted*. The RTPI welcomes measures recently announced to unlock major schemes such as East Kettering². The actual

footnotes

² Deputy Prime Minister's speech to the NHBC 22 November 2012

achievement of growth seems at least as much to depend on infrastructure spending (especially as regards major schemes) as on precisely how many weeks it takes to make a planning decision. Some major schemes have been stalled for years while arguments drag on over who is going to pay for infrastructure.

Judicial Review

14. Again focus only on the period between making an application and a decision being made risks diverting attention from other aspects of the development process. One of these is an increasing volume of judicial review cases relating to planning. We have heard from our Members with extensive experience in councils in London, Berks, Essex, Surrey and Bucks that judicial review has increasingly become a tool within the overall planning process. Even if complainants merely threaten judicial review, considerable delay ensues. It costs relatively little to start the process, and it appeals to certain dissatisfied neighbours and local communities. The papers may be lodged with the court on the last possible date so as to delay the start of the process. All of this causes undue delay and uncertainty and increases costs, and makes all parties risk-averse in decision making.
15. We recommend that the courts could afford some priority to handling such cases where economic development is involved with fixed timescales for the determination of whether or not there is a case to be heard. Judicial review can divert high-level resources in both private and public sectors to fighting such cases at a time of constraints. In this context we welcome the attention being placed by the Prime Minister on this matter and offer to work with the government on measures to improve the process whilst ensuring that genuine maladministration does not go unchecked.

Clause 4: Limiting the information that local planning authority can require

16. The aim of Clause 4 is to limit the information local planning authorities can request to that which is a material consideration in the determination of the application in question. However, many of the requests for information are dictated to local planning authorities by other government agencies.. Whilst we support the objective, legislation may be not the most effective answer. Better joint working and collaboration between government agencies and planning departments may be a quicker and simpler solution.
17. Examples of information requirements driven by other government departments and agencies include:
 - i. *European Protected Species*
Information is required on the conservation status of any European Protected Species (e.g. bats, otters, great crested newts, dormice), including population size, habitat range and trends.
 - ii. *European Protected ("Natura 2000") Sites*
Conservation status details of any European Protected Site can be required. Applicants have to obtain this information from Natural England.
 - iii. *Other important habitats e.g. peatlands*
The condition of peat and implications of removal/paving has been particularly important in recent years in relation to ancillary works for windfarm developments. There is no designated information providing body assigned, but most peatland is designated as a

Site of Special Scientific Interest (SSSI) or European Protected Site. Natural England will need to be involved.

iv. Land drainage consents/flooding

Flood Risk Assessments for sites are required, particularly if Strategic Flood Risk Assessments have not been completed. The onus is on the developer to produce the assessment using modelling data, which is available from the Environment Agency as a baseline. Any proposal within 10 metres of a 'main river' (which is not necessarily an intuitive distinction) requires land drainage consent from the Environment Agency.

18. Also, as our evidence from **Walsall** shows, by establishing effective and supportive relationships between town planners and potential applicants, a lot of the issues around over prescribing evidence can be circumvented.

Clause 5: Modification or discharge or affordable housing requirements

19. The provision of affordable Section 106 obligations was and remains an imperfect mechanism to deliver affordable housing in lieu of sufficient mainstream funding for the sector. Nevertheless, it is now well established and widespread use of this clause may result in dramatic reductions in the volume of affordable housing that is built. A number of councils are currently renegotiating with developers on the level of Section 106 agreements where sites are stalled.
20. The RTPI believe this clause may already be introducing delay. Will developers build now, when they may anticipate reducing their affordable housing obligations in the foreseeable future ?
21. We are further concerned that provisions in this clause are not future proofed, as Section 106 agreements for affordable housing cannot be revised upward if the economy improves. The RTPI also believes that the provisions do not recognise that development affects other development. It is possible to envisage a scenario where the uplift to an area from a development and/or infrastructure unlocks an otherwise stalled site, making it extremely profitable and where an upward renegotiation of the affordable housing contribution may be possible.
22. The RTPI questions whether primary legislation is an appropriate way to deal with what are in essence contractual disputes between two parties, the local authority and the developer. We envisage a scenario where the courts could end up determining what is economically viable and what is not. We believe that there ought to be criteria that check that viability is the issue at stake.
23. There is a particular issue in London and other areas where land prices are high and may be out of reach of affordable housing providers. For example John Hughes, development director at the 25,000-home Notting Hill Housing Trust warns that, 'Going forward we think it will be more difficult to compete [with the private sector] for land.'³

footnotes

³ *Inside Housing* 14 September 2012

24. We are also concerned that using *primary legislation* as a means of determining *how* Section 106 agreements are renegotiated is an excessively crude tool which rules out other useful solutions. For example we are aware of councils where other aspects of schemes are considered for renegotiation, such as housing density.

Clause 6: Disposal of land held for planning purposes

25. The RTPI supports the principle behind this clause allowing the disposal of land by local authorities for less than best consideration. This is a valuable tool for regeneration and getting development moving again.

Clause 12: Registration of town or village green: statement by owner; and Clause 13: Restrictions on right to register land as town or village green

26. The RTPI supports these clauses as they ensure the decisions on the use of land are brought fully within the town and country planning regime.

Clause 14: Applications to amend registers: modification of power to provide for fees

27. The Penfold Review, 2010 made a number of recommendations to bring non-planning regimes in line with the planning system. The RTPI has long argued for the implementation of the Review's recommendations. We support the objectives in these clauses and we urge the Government to consider further Penfold Review recommendations.

Clause 19: Modifications of special parliamentary procedure in certain cases

28. The Special Parliamentary Procedure has proved to be bureaucratic, and the RTPI welcomes to the objectives of the clause but urges the Government to consider whether it might need to go further with this measure in the interests of promoting regeneration and growth.

Clause 21: Bringing business and commercial projects under the Planning Act 2008 regime

29. Clause 1 and Clause 21 place additional burdens on the Planning Inspectorate (PINS), without additional resources. The RTPI believes that the system will become stretched and there may be an opportunity cost to PINS acting as a local planning authority, namely delays in dealing with significant infrastructure projects. Notwithstanding funding and capacity issues, PINS' integrity and objectivity is widely acknowledged and it is a cornerstone of the planning system. Any changes to its activities that subject its decisions and inspectors to further judicial review run the risk of damaging the reputation of the organisation and therefore the planning system generally.

30. The Nationally Significant Infrastructure Projects (NSIP) process should be informed by National Policy Statements (NPSs) as the Planning Act 2008 and the Parliamentary

debates leading to its agreement expected. NPSs establish the national case for the type of infrastructure and set the policy framework for decisions. NPSs have the benefit of being subject to Parliamentary scrutiny before they are adopted. The RTPI is not yet persuaded that the use of the NSIP procedures in the absence of NPSs is good planning or will speed up development.

31. That said, the exclusion of any kind of housing from this process is not consistent and may lead to unwanted consequences. For example it may militate against mixed use developments and may inadvertently confer an unfair advantage on single use out of town development, at odds with the National Planning Policy Framework.

Conclusion

32. The RTPI is not entirely convinced that the Bill in all respects is necessary to achieve renewed growth in the economy or that it will definitely achieve its objective. We are committed to working with the Government to make sure that development the country needs gets delivered, and welcome many of the various non-legislative initiatives which have been announced through the last year on moving development forward. However we are not convinced that this Bill will contribute much to this.

Contact the RTPI

If you require more detailed information please contact the RTPI.

Tino Hernandez
Head of Marketing & Communications
e. tino.hernandez@rtpi.org.uk
t. 020 7929 9486
m. 07830 879 274

Royal Town Planning Institute
The RTPI is a charity registered in England (262865) and Scotland (SC 037841)