Local Government Association Briefing
Neighbourhood Planning Bill
House of Commons, Report Stage and Third Reading

13 December 2016

Briefing

KEY MESSAGES

- Local government shares the Government's ambition to increase housing supply. Councils want to play a lead role in building new homes and support measures that will enable councils to capture the value from increased land prices on land they acquire for development. This will allow investment in the vital infrastructure that boosts housebuilding and creates places that people want to live. The Bill could do more to help the Government achieve its ambitions on speeding up the delivery of new homes, particularly those that have already been granted planning permission.

- We would like to see the Bill amended to permit planning fees to be set locally by councils. This would enable local authorities to deliver responsive council planning services that are crucial to growth and building the homes we need.

Neighbourhood planning (Part 1, Clauses 1-5)

- **Amendment 2**, tabled by Dr Roberta Blackman-Woods MP would give weight to neighbourhood plans at key stages in the planning process and **New Clause 7**, led by Nick Herbert MP, would require planning authorities to consult the Secretary of State where it wanted to approve a major development against the wishes of a neighbourhood planning body. It is important that any proposals do not have the unintended consequence of undermining the ability of a local planning authority to meet the wider strategic objectives set out in an emerging or adopted Local Plan, by unintentionally giving greater weight to the status of neighbourhood plans than to Local Plans or delaying the process of granting planning permission.

- We support **Amendment 7**, tabled by Dr Roberta Blackman-Woods MP, which would enable local authorities to recover the full costs of assisting with the development of a neighbourhood plan. It is vital to the success of neighbourhood planning that the Government undertakes a full review of the financial support provided to councils. This should ensure existing funding is adequate to allow local authorities to meet their statutory duties in relation to neighbourhood planning.

Local development documents (Part 1, Clauses 6-11)

- We are concerned about provisions that would give the Secretary of State new powers over local plans, including to intervene in the local plan-making and plan revision process. An approach that seeks to understand what the blockages are and seeks to resolve them, for example through a mutually agreed sector-led approach, will be more beneficial in the long-term than the imposition of a plan on an area.

Melanie Haslam, Public Affairs and Campaigns Adviser
Email melanie.haslam@local.gov.uk
Tel 020 7664 3087
Information centre 020 7664 3131 www.local.gov.uk

Planning conditions (Part 1, Clause 12)

- An effective, democratically-led planning system is critical to good place-making that drives growth and prosperity. Councils approve almost nine out of 10 planning applications and there is little evidence to suggest development is being delayed by planning conditions. The National Planning Policy Framework and the associated national planning practice guidance already sets out clearly expectations on use of planning conditions and the new primary legislation is unnecessary. We therefore support **Amendment 14**, tabled by Dr Roberta Blackman-Woods MP, which would remove from the Bill completely the changes to planning conditions.

- There is a risk that these proposals may have a number of unintended consequences including the potential for increased number of planning application refusals and/or statutory timescales for processing planning applications being missed, if agreement cannot be reached on pre-commencement conditions between an applicant and the local planning authority.

Planning register (Part 1, Clause 13)

- We support the intent of **Amendments 15 and 16,** tabled by Dr Roberta Blackman-Woods MP. Having access to open data on permitted development, including the numbers of resulting residential units, will enable increased scrutiny of the impact of national permitted development rights and the scale of their uptake. If councils are required to collect additional data it is crucial these new burdens are fully funded.

Compulsory purchase (Part 2, Clauses 14-35)

- We welcome the proposals to clarify in statute the principles and assumptions for assessing compensation for land acquired through compulsory purchase, in particular the extension of the 'no-scheme principle' to include relevant transport projects. This will prevent the public sector paying for land it acquires at values inflated by previous public investment in transport projects.

- We support **Amendment 21**, tabled by the Secretary of State Sajid Javid MP, which seeks to ensure that the definition of an acquiring authority has the same meaning across different pieces of legislation. This would provide clarity to all stakeholders.

BACKGROUND INFORMATION

Neighbourhood planning (Part 1, Clauses 1-5)

Councils are responding positively to neighbourhood planning and are engaging and providing support accordingly to those areas wishing to take forward a neighbourhood plan or order. We support the intention of the Bill to streamline the process for reviewing and updating neighbourhood plans.

Amendment 2, tabled by Dr Roberta Blackman-Woods MP, would give weight to neighbourhood plans at key stages in the planning process and **New Clause 7**, led by Nick Herbert MP, would require planning authorities to consult the Secretary of State where it wanted to approve a major development against the wishes of a neighbourhood planning body. The National Planning Policy Framework (NPPF) and the associated national planning practice guidance already clearly sets out expectations on the weight that may be given to relevant policies in emerging

neighbourhood plans in decision taking.[1] We would welcome assurances that the proposals included in these amendments, and the Clauses 1-5, do not have the unintended consequence of undermining the ability of a local planning authority to meet the wider strategic objectives set out in an emerging or adopted Local Plan, by unintentionally giving greater weight to the status of neighbourhood plans than to Local Plans or delaying the process of granting planning permission.

It is vital to the success of neighbourhood planning that the Government undertakes a full review of the financial support provided to councils. This should ensure existing funding is adequate to allow local authorities to meet their statutory duties in relation to neighbourhood planning. The Government should also work with local planning authorities to establish whether additional assistance, beyond the minimum level of support required by regulation, would deliver neighbourhood plans more effectively. Any resulting additional requirements on councils must be fully funded. We therefore support **Amendment 7**, tabled by Dr Roberta Blackman-Woods MP, which would enable local authorities' to recover the full costs of assisting with the development of a neighbourhood plan.

Given the status that approved neighbourhood plans have in the determination of applications for planning permission it is crucial that they are based on a robust evidence base with deliverable policies, in the same way that applies to a Local Planning Authority in preparing its Local Plan and setting out the strategic needs and priorities of the wider local area.

New Clause 5, tabled by Oliver Letwin MP, would require Local Planning Authorities to make advances available to parish councils to support the production of Neighbourhood Plan or a Neighbourhood Development Order. This amendment would provide helpful clarity that a local planning authority can provide advances from projected Community Infrastructure Levy revenues to support the production of Neighbourhood Plan or a Neighbourhood Development Order. This should be applied where there is local agreement from the Local Planning Authority and the area producing the Plan or Development Order and should not be a mandatory requirement on a Local Planning Authority. There should also be a mechanism in place for the Local Planning Authority to recover any advance payment made in circumstances where the housing specified in the Plan or Order is not built after an agreed amount of time or where a Plan or Order is not made.

New Clause 8, led by Nick Herbert MP, would empower the Secretary of State to issue a development order, which would clarify the means by which housing land supply is assessed and define the minimum amount of time before a local planning authority's failure to meet its housing targets results in its local plan being "out of date". The NPPF requires all local planning authorities to identify and maintain a five year supply of deliverable land for housing. However, the presence of a five-year land supply has been one of the areas which has been subject to significant challenges both through the plan-making process and subsequently through planning appeals for specific planning applications. The LGA has called on the Government to work with local authorities and the development industry to develop an agreed consistent methodology for calculating five-year supply.[2] The Government should also consider a more flexible approach to five-year housing supply in local authorities that can demonstrate they are promoting large scale, sustainable developments which will meet housing need in the longer term. Therefore we broadly support the intention of this amendment.

Local development documents (Part 1, Clauses 6-11)

Clauses 6-11 were added to the Bill at Committee Stage. Clause 7 enables the

[1] National Planning Practice Guidance
[2] LGA response to Call for Evidence – Local Plans Expert Group, October 2015

Secretary of State to direct two or more local planning authorities to make a joint local plan. Clause 8 and Schedule 2 further enable the Secretary of State to invite a County Council to prepare a local plan where a district council had failed to do so. We support the Government's efforts to streamline the local plan-making process. However, we are concerned about provisions that would give the Secretary of State new powers over local plans, including to intervene in the local plan-making and plan revision process.

Councils have made significant progress with plan-making, and getting plans in place requires significant time and effort. It is vital that the local plan process is not undermined by national policy changes. An approach that seeks to understand what the blockages are and seeks to resolve them, for example through a mutually agreed sector-led approach, will be more beneficial in the long-term than the imposition of a plan on an area.

Clause 10 introduces a requirement for local plans to be reviewed at regular intervals. The national planning practice guidance already sets out expectations for revisions and updates to local development plans. Any additional reviews required by the Government must be fully funded.

Clause 9 enables data standards for local development schemes and documents to be set by the Government. A number of local authorities have identified compiling the evidence base in the development of local plans as one of the most time consuming elements of plan making. This is a particular burden in relation to housing numbers and the need to ensure the evidence base is kept up to date throughout plan preparation.

We have called on the Government, through our evidence to the Local Plans Expert Group, to consider reducing the burden of local plan evidence by reviewing the extent of current evidence being collected and assessing how this might be streamlined. This clause could provide an opportunity to address this issue.

However, it is difficult to determine the full implications of the clause as there is much detail that will be determined in regulations that have not been published alongside the Bill. Draft regulations should be published as soon as possible to allow for effective scrutiny. It is crucial that these proposals do not add new burdens to the local plan-making process. New requirements should also not frustrate the ability of local planning authorities to shape and approve developments so that they are backed by local communities and serve to improve places and economies.

Amendments 17, 18, 19 and 22, tabled by the Secretary of State for Communities and Local Government Sajid Javid MP provide for the removal of the power conferred by clause 11(3) for regulations to require a local planning authority to review its statement of community involvement at prescribed times. Councils, who understand their local communities, are best placed to set out how and when they will engage the community and key stakeholders and involve them in the planning process. Whilst we support these amendments, we are still concerned that the powers that remain in Clause 10 would still potentially allow the Secretary of State to require councils to review their statements of community involvement at prescribed times.

We do not support new **Amendment 28**, led by Andrew Mitchell MP, which would prevent the payment of New Homes Bonus for sites allocated in Local Plans in certain designated areas. This would undermine the allocation of sites in Local Plans that have been through a rigorous consultation and examination process and risks impacting on local housing and infrastructure investment plans.

The LGA has also called for the government to establish a clear, robust and

transparent viability procedure to help manage down the escalation of land values and ensure the delivery of affordable housing and infrastructure communities need to back development. We therefore support **New Clause 11**, tabled Dr Roberta Blackman-Woods MP, which would ensure that viability assessments for new developments are public documents.

Planning conditions (Part 1, Clause 12)

An effective, democratically-led planning system is critical to good place-making that drives growth and prosperity. Councils approve almost nine out of 10 planning applications and the number of homes granted planning permission by local authorities in the year to March 2016 was 265,000, the highest figure since 2007.[3]

There is little evidence to suggest development is being delayed by planning conditions. Planning conditions provide a vital role by enabling planning permissions to go ahead which would otherwise be refused or delayed while the details are worked out. They can also save developers time and money as they do not need to invest in detailed submissions until after the principle of the development is granted.

The NPPF, and the associated national planning practice guidance, already clearly sets out expectations on use of planning conditions and the new primary legislation is unnecessary. With this in mind, we support **Amendment 14**, tabled by Dr Roberta Blackman-Woods MP which would remove from the Bill completely the changes to planning conditions.

There is a risk that these proposals may have a number of unintended consequences including the potential for increased number of planning application refusals and/or statutory timescales for processing planning applications being missed, if agreement cannot be reached on pre-commencement conditions between an applicant and the local planning authority. Restriction of the imposition of certain planning conditions by the Secretary of State could also reduce the ability of local planning authorities to include conditions that are necessary to address issues which might be specific to a local area or an individual development site. We therefore support **Amendment 12**, tabled by Dr Roberta Blackman-Woods, which seeks to ensure that local authorities are still able to make necessary pre-commencement conditions on developers.

We are calling for the Bill to do more to help the Government achieve its ambitions on speeding up the delivery of new homes, particularly those that have already been granted planning permission. Joint working between councils and developers is the most effective way of dealing with any concerns about planning conditions and the LGA strongly advocates the use of early, collaborative discussions ahead of planning applications being submitted for consideration. An advice note on best practice principles for using and discharging conditions was developed in 2015 by a cross-sector group and DCLG to help planning authorities, developers and statutory consultees.[4]

Planning Register (Part 1, Clause 13)

Clause 13 amends section 69 of the Town and Country Planning Act 1990 to extend the scope of the planning register to include information about prior approval applications or notification for permitted development rights in England to be placed on the register.

[3] DCLG: Planning Applications in England January to March 2016
[4] Using and Discharging Conditions – Ten Best Practice Principles

We support the intent of **Amendments 15 and 16,** tabled by Dr Roberta Blackman-Woods MP. Having access to open data on permitted development, including the numbers of resulting residential units, will enable increased scrutiny of the impact of national permitted development rights and the scale of their uptake. If councils are required to collect additional data it is crucial these new burdens are fully funded.

LGA research in 2014 highlighted a number of unintended consequences of the permitted development rights allowing offices to be converted to residential units without the need for planning permission.[5] This included a reduction in viable office space, an increase in housing that did not meet identified housing need and a reduction in the provision of affordable housing. 82 per cent of councils that responded also reported that the £80 fee for dealing with prior approval applications meant they were operating at a loss.

Local authorities have also raised concerns at the Government's intention to amend the office to residential permitted development right to allow the demolition and rebuilding of existing office buildings for residential use on a like-for-like basis.[6] In addition, to the unintended consequences listed above this could undermine ambitions in local plans, for example increased density of residential units in town centres, perhaps through taller buildings. The new right risks delivering less additional housing than if a scheme was considered through a normal planning application process.

Compulsory Purchase (Part 2, 14-35)

Compulsory purchase powers are an important tool available to councils for assembling the land needed to help deliver growth. We welcome the proposals to clarify in statute the principles and assumptions for assessing compensation for land acquired through compulsory purchase, in particular the extension of the 'no-scheme principle' to include relevant transport projects. This will prevent the public sector paying for land it acquires at values inflated by previous public investment in transport projects. We have called for local authorities to be able to acquire land at closer to existing use value, to capture more uplift in land value for infrastructure and community benefits.

We support **Amendment 21** tabled by the Secretary of State Sajid Javid MP which seeks to ensure that the definition of an acquiring authority for the purpose of compulsory purchase has the same meaning across different pieces of legislation. This would provide clarity to all stakeholders.

We would also like to see reforms go further to make the process for compulsory purchase clearer and faster. This should include:

- Stronger compulsory purchase type powers where planning permissions have expired and development has not commenced. Data suggests that the number of potential new homes on sites with planning permission could be in the hundreds of thousands.[7]
- A default position that all decisions on confirmation of a compulsory purchase order are delegated to the acquiring authority; and

[5] LGA media release, 'Charities and businesses evicted under Government planning rules', October 2014
[6] DCLG press release, 'Thousands more homes to be developed in planning shake up', October 2015
[7] LGA media release, '475,000 homes with planning permission still waiting to be built', January 2016

- A more fundamental consolidation and streamlining of the legislative provisions for compulsory purchase.

Planning fees

The Bill provides an opportunity for the introduction of locally set planning fees, including those for dealing with permitted development applications and discharge of planning conditions. We are seeking to amend the Bill in this regard, which would enable councils to deliver responsive council planning services that are crucial to growth and building the homes we need.

Developers, builders and councils are united in their call for adequately resourced planning departments that can deliver housing growth through active planning and locally set fees will enable this. A British Property Federation survey found two thirds of its private sector respondents would be willing to pay increased fees to help under-resourced planning departments keep providing an effective service.[8]

It is crucial that planning services are properly resourced. Between 2012 and 2015, councils have been forced to spend in excess of £450 million to cover the cost of planning applications, with that figure rising every year.[9] This means that year-on-year, taxpayers are subsidising approximately 30 per cent of the estimated cost of processing all planning applications in England because nationally set planning fees do not cover the full costs. We therefore support **New Clause 10**, tabled by Dr Roberta Blackman-Woods MP, which seeks to ensure that the costs of new planning duties are calculated and adequately funded.

[8] BPF survey results, October 2015
[9] "Local services threatened as councils forced to spend £450 million topping up planning fees", LGA media release, November 2015