

Greenest Planning Ever Coalition

Localism Bill Briefing House of Lords, Second Reading

Second reading

7 June 2011

Summary

The Greenest Planning Ever Coalition¹ was formed to advocate the need for sustainable development and the natural environment to be located at the heart of the proposed planning reforms. Our 6.5 million members and thousands of volunteers understand planning's pivotal role in securing a healthy natural environment, putting sustainable development into practice and building public faith in decision-making and democracy.

Reform of the planning system should be underpinned by the principle that sustainable development is the purpose of planning. This is necessary to enable the planning system to effectively integrate economic, environmental and social priorities on the ground and mediate between sometimes competing objectives. Planning should integrate the needs of the economy with environmental and social goals so as to help create sustainable communities; whilst ensuring that development takes place in the most appropriate places and in a manner which enables society to benefit from an attractive and healthy natural and built environment.

To achieve this, the Localism Bill and planning reform should:

- Reaffirm that the purpose of planning is to achieve **sustainable development**.
- Create a **strong duty to co-operate** that enables and encourages local authorities and other appropriate organisations to proactively work in partnership to address 'larger than local' matters, such as action on environmental objectives.
- Ensure **Neighbourhood Plans** are based on a robust evidence base and are consistent with other strategic and national plans. The process for devising plans must be inclusive, accessible and accountable.
- Introduce a **limited community right of appeal** that ensures appropriate weight is afforded to local and neighbourhood plans, thereby building public faith in decision-making.
- Remove **clause 124 of the Localism Bill**. By making financial incentives a mandatory material consideration in planning the Government will elevate one objective - economic growth - above all others. Giving such status to financial incentives is unnecessary if genuine sustainable development is being pursued.
- Introduce a **National Planning Policy Framework (NPPF)** that brings clarity, speed and high quality decisions that are able to protect, restore and enhance the natural environment.

Sustainable Development

We are realistic about the hurdles faced: paramount objectives such as halting the loss of biodiversity and aiding nature's recovery, adapting to and mitigating climate change, protecting our valued landscapes and making the fundamental shift towards a green, low carbon economy will not be attained without concerted effort from the public, private, voluntary and community sectors. A properly designed planning system will help to ensure proper involvement in, and scrutiny of, those plans intended to shape the future look, feel and function of land.

To embed sustainable development at the core of the planning system the Localism Bill should include a clause reaffirming that the purpose of planning is the achievement of genuinely sustainable development. This must be accompanied by a statutory definition of sustainable development. Such a definition will help to provide greater certainty for communities, local decision-makers and developers. It will also identify a common goal for everyone engaged in planning.

Defining sustainable development in the Localism Bill would not impose inflexible boundaries on communities as is claimed. Instead it enables the certainty, innovation and progress required to turn sustainable development from principle into practice. The statutory definition and the roles and responsibilities of planning authorities should in turn be supported and expanded through other strategic documents such as the NPPF and the guidance for the duty to co-operate.

We recommend:

- **That the Localism Bill is amended to state that the purpose of planning is to achieve sustainable development, including a definition of sustainable development. Such a definition should also be supported by strengthened duties on those exercising functions within the planning system.**

Strategic Planning and the Duty to Co-operate

The Localism Bill will abolish regional strategic planning. In its place we believe the legislation must introduce new and effective mechanisms for planning across local authority boundaries especially on matters such as flood risk, the protection and enhancement of landscape character and the restoration of nature which benefit the environment and communities as a whole. The Government has proposed a duty to co-operate between local planning authorities and other prescribed bodies. We are concerned that the duty as drafted will not result in local authorities proactively seeking partnerships in order to address those matters of strategic importance that have impacts across administrative boundaries. Regrettably, voluntary strategic planning can fail because certain contentious issues must be resolved across local authority boundaries.

Some of the amendments the Government introduced to **clause 95** at the Report Stage in the House of Commons were welcome, but further progress is needed to strengthen the duty. We strongly support the inclusion of marine planning within the activities to which the duty applies and changes to the test of soundness for local development documents so that the examination process includes consideration of how local authorities have met the duty. These amendments demonstrate progress. However, certain elements of the clause still need to be strengthened so as to ensure a robust and effective framework for strategic planning.

We are particularly concerned that the duty as drafted will not lead to local authorities proactively seeking co-operative partnerships in order to address matters that are of strategic importance and which impact on more than one local authority. Moreover, the amended duty suggests an undue bias towards using strategic planning primarily for economic growth and infrastructure development. For example, the central role of Local Enterprise Partnerships in strategic planning risks prioritising narrow business objectives over delivering integrated sustainable development. It may also result in an unaccountable and unrepresentative decision-making process which could undermine public faith in planning.

We recommend:

- **That the duty to co-operate empowers local authorities and other bodies to work together in order to achieve sustainable development. Priority should not be given to economic growth or infrastructure development if this has a detrimental impact upon social and environmental objectives.**
- **That there is recognition that strategic planning involves more than consulting those authorities potentially affected by a development plan. The duty to co-operate must allow for the integration of other strategic matters that impact upon the development and use of land into the planning process. Co-operation must extend to those strategic documents or processes that impact upon local planning and development decisions. For example, this could include strategies on biodiversity conservation and ecological networks and areas for restoration, Biodiversity Action Plans, energy assessments and strategies and climate change adaptation.**
- **That the Government strengthen the application of the duty to marine planning and thereby achieve better integration with terrestrial planning. Marine plan authorities must also be included in the list of persons subject to the duty. Like the test of soundness for local development documents, there must also be a mechanism which tests and measures if the duty has been complied with in relation to marine planning.**
- **That the duty to co-operate be supported by evidenced guidance and incentives to encourage co-operative behaviour. The NPPF and any additional guidance needs to state clearly how the duty will apply in practice, identify the drivers for co-operation, outline those activities that need co-operation and furnish guidance on what evidence will be needed to show the duty has been complied with. There also needs to be a system of reporting to enable effective scrutiny of a local authorities' performance.**

Neighbourhood Planning

We welcome the creation of neighbourhood planning and the Government's desire to enable local residents to shape the future of their communities. To ensure that Neighbourhood Plans are fully inclusive and promote necessary sustainable development they must be based on robust, up-to-date evidence and enable effective participation from all interested parties at every stage. Plans must be guided by strategic and national planning and must deliver on national need and international obligations such as sustainable housing and renewable energy.

We recommend:

- **That Neighbourhood Plans be subjected to the requirement to achieve sustainable development.**
- **That the neighbourhood planning process be accessible to, and representative of, the interests of all members of a community to ensure that local needs can be met in the most appropriate manner. As such, the Bill needs to be amended to ensure Neighbourhood Plans do not disproportionately represent business interests.**

Community Rights of Appeal

We welcome the Government's intention to promote a more collaborative approach to planning and thereby reduce the need for appeals. Nevertheless this approach does not obviate the need for a public right of appeal. Developers often have the advantage of a seat at the table and the resources to purchase expertise for the duration. If applications are refused developers have an automatic right to appeal - a right that is currently denied to third party objectors when planning permission is granted even if the decision contradicts the local authority's own local plan.

Concerns raised that a community right of appeal would undermine adopted development plans are unfounded. Rather than undermining the development plans, we recommend a limited right of appeal for use in case where decisions are not in line with the local or Neighbourhood Plans. This would be a reasonable and vital safeguard to ensure reasonable balance, to help build public faith in local democracy and the new planning system, and buttress the role of local and neighbourhood planning.

We recommend:

- **That the Localism Bill addresses the current imbalance within the appeals system by introducing a limited public (third party) right of appeal.**

Material considerations when deciding planning applications

Historically financial considerations have had the potential to be a material consideration in a planning application as have other issues directly related to the land in question. However, **clause 124** specifically identifies financial payments in primary legislation as material to a planning application. This risks distorting the system as the status of a material consideration specified in legislation is greater than those in policy. How for example would this impact on the proposed protections being afforded to the natural environment in the NPPF? No other considerations such as climate change, housing need or biodiversity loss receive such status in planning legislation, as traditionally what is material has been left for case law and policy to identify. We are concerned that clause 124 will result in cash payments being elevated to the first amongst equals of material considerations after the development plan.

The result of this clause could be to encourage local authorities to sanction development for short term financial gain without giving sufficient regard to the longer term social and environmental implications. This outcome contradicts statements by the Minister for

Decentralisation, Greg Clark MP, that: *‘the purpose of planning is to promote sustainable development and that all plans and decisions should reflect that.’*ⁱⁱ

In Report Stage, the Minister also stated that the reforms were *‘all geared towards making the plan prominent and, indeed, sovereign’*.ⁱⁱⁱ If clause 124 remains in the Bill, we are concerned that it will give greater weight to financial considerations such as the Government’s New Homes Bonus incentive scheme and therefore risk significantly undermining the plan-led system.

We recommend:

- **That Clause 124 be removed from the Localism Bill. The clause was inserted into the Bill at Report Stage in the House of Commons, was subject to limited debate and will fundamentally distort the planning system by encouraging local authorities to grant planning permission for a development on the basis of financial considerations alone even if the application departs from the development plan.**

National Planning Policy Framework (NPPF)

The anticipated NPPF will be a crucial policy mechanism for planning. A strong national vision is essential to guard against the danger that localism becomes merely parochialism. A spatial, but not site-specific, NPPF would help people to visualise the scale of the challenges ahead and how their local community relates to and help address these.

We recommend the NPPF should:

- **Provide further detail on how sustainable development will be delivered through the planning system.**
- **Identify national ambitions such as protecting, restoring and creating habitats at a landscape-scale to secure a coherent ecological network and action on climate change.**
- **Contribute to the delivery of the objectives in the forthcoming Natural Environment White Paper.**
- **Support the development of renewable energy infrastructure.**
- **Provide the framework for effective strategic planning, including guidance on where local authority partnership working is beneficial and how the duty to co-operate can be implemented in practice.**

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This briefing is supported by the following organisations:

- Amphibian and Reptile Conservation
- Badger Trust
- Bat Conservation Trust
- Butterfly Conservation
- Campaign for Better Transport
- Campaign for National Parks
- Campaign to Protect Rural England
- Environmental Law Foundation
- Friends of the Earth England
- Grasslands Trust
- National Trust
- Open Spaces Society
- Plantlife
- Royal Society for the Protection of Birds
- The Wildlife Trusts
- Woodland Trust
- WWF-UK

i The Greenest Planning Ever coalition is a campaign of Wildlife and Countryside Link and partners. Our briefings can be downloaded from <http://www.wcl.org.uk/planningreform.asp>. Wildlife and Countryside Link (Link) is a coalition of the UK's major environmental organisations working together for the conservation and protection of wildlife and the countryside. Link is a registered charity number 1107460 and a company limited by guarantee registered in England and Wales number 3889519

ii House of Commons, Report Stage debate on the Localism Bill, 17 May 2011.

iii Ibid.