

Greenest Planning Ever Coalition

Localism Bill Briefing House of Lords, Report Stage

Report stage

October 2011

Summary

This briefing paper sets out the Greenest Planning Ever coalition's priorities for the Localism Bill.ⁱ We believe that the planning system is a fundamental mechanism for the promotion and achievement of sustainable development. The Localism Bill must reinforce the planning system's primary role in the integrated delivery of economic, social and environmental objectives. This can be achieved by:

- Requiring those exercising functions in the planning system to positively promote sustainable development.
- A clear and robust definition of sustainable development on the face of the Bill.
- Removing clause 130 to ensure that financial considerations do not unduly influence decision makers.
- Ensuring that the duty to co-operate is implemented in a way that furthers the achievement of sustainable development.
- Ensuring that neighbourhood planning is inclusive and accessible by explicitly recognising the need for effective public participation in the formulation of neighbourhood plans and development orders.
- Introducing a qualified community right of appeal.

Sustainable Development: amendment 203K

As the planning reforms progress, we are becoming increasingly concerned that the Government are seeking to narrow the focus of the planning system, placing more emphasis on promoting economic interests and using planning simply as a tool to facilitate growth. Whilst facilitating economic development is an important element of the planning system, it is but one of many. We must not lose sight of the broader role that planning can play and the many benefits it can help bring to improve the quality of life for everyone. A planning system charged with the purpose of achieving sustainable development is an invaluable tool in helping to stimulate the economic development that is needed, whilst ensuring that we live within environmental limits in a strong, healthy and just society.

We understand that development and business are important for the economy, but so too is a healthy environment. Short-term economic growth that has negative long-term environmental or social consequences does not support the continuing prosperity of this country. Protecting the natural environment is not only important for wildlife and the communities who enjoy its innate beauty, but is worth billions of pounds to the UK economy.ⁱⁱ The value of the natural environment should therefore be better integrated and considered in decision-making. In its Natural Environment White Paper, *The Natural Choice*, the Government committed to “retain

*the protection and improvement of the natural environment as core objectives of the planning system.*ⁱⁱⁱ The Localism Bill must help deliver this commitment.

Planning has a positive role to play in supporting those measures that help create sustainable, low carbon growth. However, we are concerned that the Government is currently using the term 'sustainable' development to promote economic growth, without recognising that growth which fails to respect environmental limits will ultimately be unsustainable and therefore self defeating. We have seen this reinforced in the draft National Planning Policy Framework (NPPF), which seeks to establish economic growth as the primary objective of the planning system.^{iv} We are concerned that the reorientation of the planning system to facilitate short-term measures to drive economic growth will lead to decisions which are unsustainable and cause significant problems in the long-term. At the same time, the ability of the planning system to deliver multiple benefits in an integrated way will be lost if economic interests are allowed to dominate.

In order to embed sustainable development at the core of the planning system the Government should accept amendment 203K tabled by Lord Greaves, Baroness Parminter, Baroness Hamwee and Lord McKenzie. This amendment would ensure that people exercising functions in the planning system act in a way that promotes sustainable development, supported by a clear and robust statutory definition of sustainable development. This definition incorporates the principles from the UK Sustainable Development Strategy 2005.^v

Existing sustainable development duties on local planning authorities^{vi} need improvement if there is to be a real and beneficial change in approach towards delivering sustainable development on the ground. We believe that the statutory duty must be more positive and proactive. A duty on those exercising planning functions to not just contribute to, but to *promote*, sustainable development, can lead to clearer responsibilities and improved delivery of our sustainable development goals. Local planning authorities should be responsible for promoting a clear understanding of and commitment to achieving sustainable development so that individuals can work together to achieve it.

We firmly believe that defining sustainable development in the Localism Bill will help to provide greater certainty for communities, local decision-makers and developers, whilst also identifying a common goal for everyone engaged in planning. A statutory definition of sustainable development, based on sound principles, would not impose inflexible boundaries. In fact, it would bring certainty, which would encourage innovation and facilitate progress. It is often said that sustainable development means different things to different people. But it is not the definition of sustainable development that changes. Rather, local circumstances may require different approaches to be taken to achieve it; a statutory definition can still be interpreted by individual communities in a manner that responds to their circumstances.

This 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 guidance on the duty to cooperate.

We therefore urge peers to support amendment 203K.

Clause 130: local finance considerations

Clause 130 allows local financial considerations to be a material consideration in planning decisions. We believe that clause 130 should be removed from the Localism Bill because it risks fundamentally distorting the planning system. The clause could encourage local decision makers to sanction a development that brings short-term financial rewards without giving sufficient regard to its longer term social and environmental merits and implications. This could undermine the plan-led system, and would raise fundamental concerns over the ability of local

authorities to act as impartial arbiters of planning applications and to make decisions in the public interest.

Financial considerations have always had the potential to be a material consideration in a planning application. However, the materiality of a financial consideration has previously been left to the decision maker to determine. This clause increases uncertainty by stating that local authorities should have regard to financial considerations only ‘so far as material to the application’. Yet no definition of what this means in practice is provided, and that is likely to open the door to legal challenges aimed at obtaining definitive direction on those circumstances in which financial incentives will be material to an application.

By specifically identifying financial payments in primary legislation clause 130 risks elevating such payments above other material considerations, such as climate change and housing which are – as is traditional – identified as material in case law and policy. This clause could also hinder effective public participation in planning by making the decision-making process less transparent and biasing it towards those parties offering financial rewards. Such a scenario could seriously undermine the public’s faith in the planning system and local democracy.

The Government’s aim with clause 130 is to clarify that financial considerations (such as the New Homes Bonus) can be material in planning applications. However, by seeking to achieve this clarification through legislation, the Government has created uncertainty, confusion and widespread concern for the integrity of the planning system. If clarification is required, it should be through guidance or other non-legislative routes.

We therefore urge peers to support the removal of this clause.

Duty to Cooperate

The Localism Bill introduces a new mechanism for strategic planning: the duty to cooperate. This duty requires local planning authorities to cooperate on the preparation of planning documents, including development plan documents and marine plans. A strategic and effective planning system has a key role to play in helping us tackle those challenges which require a ‘larger than local’ response. The duty to cooperate must help ensure that local authorities and other prescribed bodies cooperate with each other in order to achieve sustainable development.

We acknowledge that there have been improvements made to the duty to cooperate since it was introduced. However, we remain concerned that its implementation will not achieve effective and robust strategic planning across a range of relevant matters, and that it will be limited to the use of strategic planning for economic and infrastructure development.

To ensure that larger than local planning is truly strategic and incorporates all relevant interests the Government must recognise the important role of Local Nature Partnerships. They must be treated in the same way as Local Enterprise Partnerships and given the same level of financial and administrative support. Further, they should also be listed as a prescribed body whose work must be taken into account by those exercising the duty to cooperate.^{vii} This will support the planning system in delivering on many of the positive objectives in *The Natural Choice*,^{viii} the UK National Ecosystem Assessment and the England Biodiversity Strategy, *Biodiversity 2020*.

In addition, we oppose amendment 204 tabled by Lord Jenkin which seeks to remove the power for the Secretary of State to issue guidance regarding the duty to cooperate. Considering that the duty to cooperate will present a new way of working for many local authorities, we strongly believe that the duty to cooperate must be supported by robust policy in the NPPF and specific additional guidance. Such policy and guidance should seek to provide advice to local authorities on matters including:

- examples of action required for cooperation;
- the process for considering compliance with the duty through the test of soundness, and the evidence needed to demonstrate cooperation;
- suggestions for effective and transparent data collection and management;
- suggestions on what information should be included in the annual monitoring report;
- suggestions on how to manage and resolve disputes and conflicting priorities and interests.

Neighbourhood planning: amendment 210E

One of the principles of sustainable development is ‘good governance’, which includes ensuring public participation. The Conservative Planning Green Paper *Open Source Planning* states that, ‘To establish a successful democracy, we need participation and social engagement.’^{ix} We believe that neighbourhood planning must recognise the need for proactive public participation as part of sustainable development, and also in order to meet the UK’s obligations under the Aarhus Convention.^x

Planning is a recognised structure for ensuring dialogue and debate, conflict resolution and the consideration of impacts in the round. The public benefits from neighbourhood planning can only be understood and arrived at with proper public engagement in the process. As currently drafted, the Localism Bill does not fully recognise the importance of positive, proactive and meaningful participation by all sections of the community in neighbourhood planning and the planning process as a whole. The Bill includes provisions for public consultation and referendums, but by themselves these do not constitute robust or meaningful forms of participatory planning. A right to be heard in person is an essential element of our planning system and therefore must also be part of the neighbourhood planning system.

Ensuring that neighbourhood planning is genuinely inclusive will help to improve the quality, relevance and effectiveness of policies and plans and ensure that socio-environmental concerns are addressed alongside economic issues. An inclusive approach is also likely to create more confidence in the policies and decisions, as well as in the institutions, that develop and deliver them.

We therefore urge peers to support amendment 210E.

Community Rights of Appeal: amendment 232ZB

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 of the planning process. If applications are refused developers have an automatic right of 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 over a community right of appeal undermining adopted development plans are unfounded. We continue to recommend a limited right of appeal for use in cases where a decision is not in line with the local or neighbourhood plan. Rather than undermining development 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 ensure adequate weight is given to local and neighbourhood plans by decision makers.

We therefore urge peers to support amendment 232ZB.

Notes

This briefing is supported by the following 15 organisations:

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

These organisations are all members of the Greenest Planning Ever coalition, which is a campaign of the Wildlife and Countryside Link and partners.^{xi}

For more information, please contact Kate Hand, kate@wcl.org.uk or on 020 7820 8600.

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ⁱ The Greenest Planning Ever coalition is a campaign of Wildlife and Countryside Link and partners, and has come together to ensure that the natural environment is at the heart of planning reform.
<http://www.wcl.org.uk/planningreform.asp>.

ⁱⁱ Defra (2011) *National Ecosystem Assessment*, www.defra.gov.uk/environment/natural/uknea/.

ⁱⁱⁱ HM Government (2011) *The Natural Choice: securing the value of nature*, London: HM Government, p. 3.

^{iv} Department for Communities and Local Government (2011) *Draft National Planning Policy Framework*, London: CLG.

^v HM Government (2005) *Securing the Future*, <http://www.defra.gov.uk/publications/files/pb10589-securing-the-future-050307.pdf>

^{vi} Under section 39 of the Planning and Compulsory Purchase Act 2004 to prepare planning policy with the objective of “contributing to the achievement of sustainable development.”

^{vii} The draft The Town and Country Planning (Local Planning) (England) Regulations [2012] are currently being consulted on. We submit that draft Regulation 6(2) should be amended to include Local Nature Partnerships.

^{viii} Defra (2011) *Natural Environment White Paper*,
<http://www.official-documents.gov.uk/document/cm80/8082/8082.pdf>, p.3.

^{ix} Conservatives (2010) *Open Source Planning*,
<http://www.conservatives.com/~media/Files/Green%20Papers/planning-green-paper.ashx>, p.1.

^x UNECE (2005) *Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters* (Aarhus Convention), <http://ec.europa.eu/environment/aarhus/>.

^{xi} 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 (No. 1107460) and a company limited by guarantee in England and Wales (No.3889519).