

Growth and Infrastructure Bill 2012

LGA On the Day Briefing

18 October 2012



Key measures within the Bill

Clauses will:

- Enable the Secretary of State to designate authorities as 'poorly performing'. Once an authority is designated, applicants will be able to apply directly to the Secretary of State for the determination of their planning application.
- Allow an appeal to the Secretary of State seeking the renegotiation of the affordable housing element of a Section 106 (S106) agreement if the local authority has not agreed to modify the agreement or has failed to make a determination within a specified time.
- Limit the information that a local planning authority can require when determining a planning application to those issues that will have a material consideration in the determination of the application.
- Amend the Town and Village Green registration process to prevent a Town and Village Green application from delaying or preventing development in cases when a planning application is in progress or has been approved.
- Include 'promoting economic growth' as a key consideration in the Electronic Communications Code.
- Add commercial and business projects to the Major Infrastructure Regime under the Planning Act 2008.
- Postpone the business rate revaluation until 2017.

LGA Comments on the Bill

Further changes to the planning system will not address the key issues stalling development and will lead to delay and uncertainty. This Bill could represent an enormous opportunity to empower local areas to drive growth from the ground up. But that opportunity will be missed unless the Bill focuses on the things that can tackle the real barriers to growth.

The Government should use this Bill to lift restrictions on local authority borrowing for housing, freeing councils to build new affordable homes and kick-start job-creating infrastructure projects. The LGA will be putting forward amendments to this effect through the course of the Bill.

There is a building backlog of 400,000 new homes and councils are approving residential and commercial applications at record levels – 87% of applications were approved in 2011/12 - a ten year high¹. It is clear that planning is not the main barrier to growth. Access to mortgage and development finance is constrained because developers can't borrow to build and first-time buyers can't get mortgages. Measures in this bill which take planning decisions away from local communities and place them in

¹DCLG Live Planning Application Statistics:
<http://www.communities.gov.uk/documents/statistics/xls/2191160.xls>

the hands of an unelected quango is not going to fix that and undermine local decision making. These measures are at odds with to the Coalition's localism programme.

Measures in the bill will allow the Secretary of State or his planning inspectorate to take decisions on major applications that impact on local communities. This extends the role of the Government's Planning Inspectorate at the expense of local decision making and may make communities more reluctant to give consent to development in future. A target driven culture has been shown time and time again not to work and to lead to unintended consequences. It is better to spend time up front to get the development 'right' than have a decision driven by a centrally set measure.

The bill also introduces measures to allow the Secretary of State or his planning inspectorate to renegotiate crucial affordable housing that has previously been agreed locally and rule on major commercial and business applications in a local area. This measure is unnecessary as local authorities are overwhelmingly willing to renegotiate agreements where viability is a genuine concern and may delay current developments as developers wait for the new provisions to come into force.

The move toward local retention of business rates is a step in the right direction. It is vitally important that the new system shares a fair balance of risk and reward between local authorities and the Treasury, and delivers a fair deal for all local areas with varying capacities to grow. We are aware that businesses are having a tough time and postponing the revaluation of rateable value will give businesses more certainty. However, we believe the information on which business rates are set should be kept up to date and we would not want to see the revaluation postponed beyond 2017.

Given that planning is a devolved matter, most of the provisions within this Bill apply only to England. However, the following clauses within the Bill (available online²) also apply to Wales: 2, 7, 13, 15, 16, 18, 19.

Detailed analysis of key measures

Designation of poor performance and determination of applications by the Secretary of State. (Clause 1)

- Allows an applicant to choose to have their planning application determined by the Secretary of State where the local planning authority has been designated as poorly performing. This includes planning applications and applications for listed building or conservation area consents.
- Requirement for the Secretary of State to publish the criteria to be used in making a designation and subsequently removing the designation and to publish when a designation has been made.

LGA Response

² <http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0075/2013075.pdf>

These measures are at odds with to the Coalition's localism programme. Furthermore they are without justification given that councils are overwhelmingly saying 'yes' to development through the planning system.

For example, last year councils hit a ten year high in the percentage of applications approved for all types of development (with 87 per cent of applications receiving approval)³. In 2011/12 this equated to an estimated 2,536 residential schemes granted planning permission⁴. For the year ending March 2012 approvals for major office, general industry and retail distribution applications hit over 90% and those for minor applications of the same nature were approved in 99% of cases⁵.

Councils are working constructively with applicants on major developments. By definition, these developments are more complex and time consuming and the issues are varied depending on the site in question. For example, the impact of major sites on the local area is likely to be significant and generate resident interest and concern, complex environmental issues are likely to arise and negotiations concerning the sustainability of the scheme and the required infrastructure and associated contribution can often be time consuming.

The ability for communities to have their say locally through the planning process and their locally elected representative is a key principle of the planning process. These measures will undermine locally accountable decision making and may make communities more reluctant to give consent to development in future.

A target driven culture has been shown time and time again not to work and to lead to unintended consequences. Councils do not wish to say 'no' to applications where further work could lead to approval because of imposed time pressures, targets and sanctions –planners report that developers agree it is better to spend time up front to get the development 'right' than be faced with a rejection and have to start the process from scratch.

This is a substantial expansion of the role of the Planning Inspectorate and will necessitate a significant injection of funding to the Inspectorate in order to result in speedy decision making. It makes more sense to prioritise proper funding for swift decisions at the local level than expanding a quango to run this process.

In any cases where a council is designated as poorly performing the LGA would not wish to see powers removed from local authorities before that local authority had received an opportunity to tackle performance issues

³ www.communities.gov.uk/planningandbuilding/planningbuilding/planningstatistics/livetables/livetablesondevelopmentcontrolst/

⁴ Taken from Glenigan research, commissioned by the LGA 'An analysis of unimplemented planning permissions for residential dwellings'

⁵ Of decisions made. DCLG Live Planning Application Statistics:
<http://www.communities.gov.uk/documents/statistics/xls/2191172.xls>

through sector led support. We will be seeking assurances from the Government to this effect.

Limiting the information that local planning authority can require. (Clause 4)

- Local Planning Authorities will be limited to requesting information that is reasonable with regard to the nature and scale of the proposed development.
- Reasonable is defined as information that will have be a material consideration in the determination of the application in question.

LGA Response

It is common sense not to seek information from applicants without good reason.

Modification or discharge of affordable housing requirements secured through Section 106 agreements (Clause 5)

- An applicant can apply to the local authority at any point for modifications to an agreed planning obligation with respect to affordable housing. This can include modifications to or removal of the affordable housing requirement, or where the obligation is solely made up of the affordable housing requirement the removal of the obligation itself.
- When receiving such a request the local authority, if it considers that the affordable housing requirement means that the development is not viable, may modify, replace or remove the requirement. The authority is not permitted to make the obligation more onerous. The authority must make a determination within a period specified by the Secretary of State.
- In the case of repeat applications for modification the authority may choose not to modify the obligation.
- Where an authority fails make a determination within the specified time, determines that no modification will be made or determines a modification not in line with the regulations the applicant may appeal to the Secretary of State.
- The Secretary of State's determination will last for a period of three years. Following the elapse of this period the determination ceases to have effect.

LGA response

This measure is unnecessary. Councils are already renegotiating S106 agreements voluntarily where this is relevant and locally appropriate. For example, eighty per cent of councils responding to a recent LGA survey indicated that they are willing to renegotiate S106 agreements where this is likely to help restart stalled development schemes and only two per cent felt they would be unable to renegotiate⁶. Annex A details a number of examples which demonstrate the proactive approach local authorities are

⁶ http://www.local.gov.uk/web/guest/research-housing/-/journal_content/56/10171/3750535/ARTICLE-TEMPLATE

undertaking to unlock stalled sites.

Any perception that councils are asking for unaffordable 'nice to have's' through planning which in these difficult times is rendering development unviable is wrong. New research carried out by the LGA has shown that Councils on average are willing to accept a level of affordable housing around a third lower than set out in their local plan⁷.

Amending S106 requirements does not tackle the key issues holding up development. Changes to S106 will not address the wider market issues which relate to demand and access to mortgage and development finance, and will not increase purchaser confidence.

The measures will increase costs and could lead to further delay. The significant expansion of the role and function of the Planning Inspectorate at the expense of local decision making is likely to be costly. In addition, there is a risk that schemes that would have gone ahead will now be delayed while developers wait for the new regime to be put in place through primary legislation. There is therefore a danger that the proposals could have the opposite effect to the one intended and delay rather than speed up development.

Community confidence is crucial to enabling growth and development that is acceptable locally. There is a danger that removing necessary contributions to infrastructure will make communities more reluctant to give consent to development in future, as they'll have less trust in promises from developers. The Government has to be careful to avoid creating a situation which could mire future planning decisions in acrimonious challenges and judicial reviews which could slow the planning approval process.

Amendments to the Communications Act to allow amendments to the Electronic Communications Code. (Clause 7)

- The need to promote economic growth is added to the list of considerations which the Secretary of State must have regard to when making regulations, conditions and restrictions on the applications of the electronic communications code.

LGA response

This measure will add growth to the existing considerations which providers must have regard to. This measure will not however tackle the real barrier to broadband roll-out; that the Government does not have the EU's permission to spend the £530 million it wants to allocate to broadband. In the absence of state aid clearance there is no superfast broadband programme and resolving this blockage must be the main focus for Government.

Registration of town and village greens (Clauses 12, 13, 14)

⁷ http://www.local.gov.uk/web/guest/research-housing/-/journal_content/56/10171/3750535/ARTICLE-TEMPLATE

- Allows an owner of land in England to deposit a statement and map with the commons registration authority to bring to an end any period of use 'as of right' for lawful sports and pastimes on the land.
- Applications to register a Town and Village Green will be restricted if any of the trigger events listed in the legislation occur. For example (planning application publicised, land identified in a draft or finalised local plan or neighbourhood plan as being suitable for development).
- Powers to allow the Secretary of State, through regulations, to allow fees to be charged for applications which amend a register of common land or town or village greens.

LGA response

Town and village green legislation is too often used by opponents of particular schemes to seek to register land that would not normally be considered 'green' in the usual sense of the expression, in order to stall or block development. Although applications to register land as a town or village green are often refused, they can have a negative impact by delaying schemes for years. Examples are attached at Annex B. The current financial climate makes the resolution of this issue more urgent as such delays can render schemes unviable, which can completely stall badly needed regeneration projects and it is helpful that the Government has responded positively to LGA campaigning on this issue.

We know of cases where a Town and Village Green application has been approved on sites where permission for development has been granted by the local planning authority and in extreme cases where development has begun. We therefore strongly support the government's proposals to limit the use of Town and Village Green applications where a planning application has been published or where land has been designated in the local plan.

We understand that the provisions which allow the deposit of a map and statement will end the use 'right' formally for sport and pastimes and will remove liability for the land to be formally designated as a Town and Village Green. This will not however prohibit a landowner from informally allowing use of the land subsequently. We will be seeking clarification from DEFRA on this position and for that of areas on which sports and pastimes have taken place for 20 years or more.

The administrative burden involved with processing applications is also substantial whilst there is currently only a nominal cost to the applicant. A recent example from a county council cited costs of seeking legal advice at £32,000 for one case alone which has yet to be resolved. At a time when significant cuts are being made to public spending the substantial expenditure that is necessary to process these applications is unsustainable. It is therefore helpful that the government has introduced provisions to enable a fee to be charged locally.

Extending the Major Infrastructure Planning Regime to include commercial and business projects (Clause 21)

- Enables the Secretary of State to direct that certain development requires consent under the nationally significant infrastructure regime. This includes energy, transport, water or waste projects and business or commercial projects (to be prescribed).

LGA response

The accompanying government press statements indicate that decisions on such large scale business and commercial projects will be fast tracked within 12 months. We are confused how this represents a fast track scheme given that Councils are already determining and approving over 90% of major applications for major commercial and business applications⁸ within 52 weeks⁹. We would also be keen to discuss with the government how a project of national significance is defined.

Postponement of business rates revaluation until 2017

- New non-domestic rating lists should now be compiled by April 2017 (previously April 2015).
- New lists must be compiled every five years thereafter.

LGA response

We are aware that businesses are having a tough time and postponing the revaluation will give businesses in areas where underlying rents are rising more certainty. However we believe that the data underlying business rates should be kept up to date and would not want to see the revaluation postponed beyond 2017. We understand that the government has no intention to change the date of the 'reset' in the business rates retention scheme which is still planned to take place in 2020.

Annex A Overview of additional measures in the Bill

Awarding costs between parties at appeal (Clause 2)

- The Secretary of State will be able to award costs between parties at planning appeals, and to set out the circumstances when costs between parties and the Secretary Of State shall be awarded.
- The Secretary of State will now be able to recover *proportional* costs (as well as full costs) incurred by him in relation to Inquiry, No Inquiry and Appeal.
- The Secretary of State will be able to direct that anything in connection with an appeal shall be dealt with directly by the Secretary of State

Compulsory Purchase Orders (Clause 3)

- Allows the Secretary of State to award costs where an inquiry set up by Ministers to hear objections to compulsory purchase of land by public

⁸ office/research and development, general industry/storage/warehouse and retail distribution and servicing

⁹ <http://www.communities.gov.uk/documents/statistics/xls/2191172.xls>

authorities is cancelled, or where a party does not appear at inquiry.

Disposal of land at less than best consideration (Clause 6)

- The Secretary of State is enabled to grant general consent for classes of disposals as well as specific consent on receipt of an application from a local authority.
- This clause clarifies the ability to dispose of land at less than best consideration to land held for planning purposes.

Periodic Review of mineral planning permissions (Clause 8)

- Allows Minerals Planning Authorities in England greater discretion as to whether to undertake a periodic review of the minerals permissions relating to the mining sites in their areas and to set a review date.

Stopping up orders and diversion of highways and public paths (Clause 9, 10 and 11)

- Enables a stopping up order for stopping up or diversion of highways to be published in draft at the planning application stage (currently the applicant must wait until permission has been granted) in anticipation of a planning permission. Provides powers to the local authority and Secretary of State to delay confirmation of the stopping up or diversion order until the permission has been granted or it is satisfied that it is necessary to enable the development to be carried out.
- Allows a landowner to deposit a map and a statement with the highways authority showing admitted public paths and to declare that the landowner has no intention to allow any other part of the land to become subject to a public right of way.

Power Stations: Repeal of requirements to give notice (Clause 15)

- Repeal of the requirements to give notice for the use of natural gas and petroleum products in power stations.

Payments to other license holders under the Gas Act 1986 (Clause 16)

- Allows for the proposed gas Network Innovation Competition and other policies regarding gas transporters to pay monies raised to other licensees other than gas shippers or suppliers, to proceed on a clear statutory footing.

Variation of consents under the Electricity Act 1989 (Clause 17)

- Section 36 consents (which relate to the construction, operation or extension of certain electricity generating stations) can now be varied by the relevant Secretary of State to take account of changes (for example in technology and design). This puts S36 consents in the same position as holders of development consent orders made under the Planning Act 2008.

Deemed planning permission under the Electricity Act 1989 (Clause 18)

- When consent is granted by the Secretary of State this provision enables the Secretary of State to direct that planning permission is deemed to be granted in respect of any operation or change of use. This means the developer does not need to make a separate

application for planning permission to the local planning authority.

Special Parliamentary procedure regarding compulsory acquisition of land (Clause 19 and 20)

- Repeal of provisions that require in specified circumstances special parliamentary procedure in the case of compulsory purchase of land where land belongs to a local authority or statutory undertaker.
- Widens the circumstances where the Secretary of State can disapply requirements for parliamentary process for the compulsory acquisition of land.

Employee Owners (Clause 23)

- Sets out the circumstances under which an employee can become an employee owner and the limitations of employee rights that result from this.

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