

Get in on the Act

Neighbourhood Planning
Act 2017

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Background

The Neighbourhood Planning Bill was introduced in the House of Commons on 7 September 2016. The legislation completed its parliamentary stages on 26 April 2017, and received Royal Assent, becoming law, on 27 April 2017.

The Neighbourhood Planning Act 2017 (the Act) is intended to strengthen neighbourhood planning by ensuring that planning decision-makers take account of well-advanced neighbourhood development plans and by giving these plans full legal effect at an earlier stage. It introduces a process for modifying neighbourhood development orders and plans that the Government intends to be more proportionate. Measures in the Act require all local authorities in England to identify the strategic priorities for development in their areas in an up-to-date plan.

The legislation makes changes to how pre-commencement conditions can be used and gives the Secretary of State power to make regulations prescribing their use in certain circumstances. Local authorities will be required to record specified prior approvals for permitted development rights on the planning register. The Act also makes further changes to the law on compulsory purchase, following reforms introduced by the Housing and Planning Act 2016.

The Act is made up of three parts as follows:

1. Planning
2. Compulsory purchase
3. Final provisions.

This publication aims to provide readers with an introduction to the Act and summarises the main issues on which the LGA campaigned.

The role of the LGA and local government in influencing the legislation

We worked with LGA Vice-Presidents, ministers, parliamentarians, and civil servants as the Bill made its way through Parliament to provide background information on the proposals, support and table amendments to the legislation, and influence government policy. LGA representatives gave evidence to both the Bill Committee and parliamentary committees on housing and planning.

As the legislation made its way through Parliament:

- Councillor Tony Newman, member of the LGA Environment, Economy, Housing and Transport (EEHT) Board, gave evidence to the Public Bill Committee on the Neighbourhood Planning Bill as part of its scrutiny of the legislation
- we responded to government consultations on improving the use of planning conditions and the Housing White Paper
- LGA Chairman Lord Porter gave evidence on the LGA's priorities for housing and planning to the Public Accounts Committee to assist in its inquiry into housing
- we published our Housing Commission report 'Building our homes, communities and future', which was commended by the Secretary of State.¹

Our campaigning on behalf of local government was developed with the support from and input of councils from across the country. It led to a number of positive changes, including:

- An amendment supported by the LGA gave new powers to local authorities for the development of new towns and villages.
- In response to amendments we supported on the impact office-to-residential conversion is having in some local areas, ministers stated that the Government will allow Article 4 directions to remove this permitted development right over a larger area than at present.² This will apply in areas where the local planning authority is delivering 100 per cent or more of its housing requirement.
- Ministers gave assurances that local planning authorities will be able to charge planning application fees when permitted development rights had been removed.
- The LGA worked with parliamentarians to table amendments which would allow councils to set planning fees locally to enable full cost recovery. The Housing White Paper, which was published during the course of the Bill, included a commitment to increase planning fees by 20 per cent.

¹ LGA Housing Commission report 'Building our homes, communities and future' www.local.gov.uk/lga-housing-commission-final-report

² An Article 4 direction is made by the local planning authority. It restricts the scope of permitted development rights either in relation to a particular area or site, or a particular type of development anywhere in the authority's area.

The key provisions and their implications for local government

Part 1: Planning

Neighbourhood planning

Section 1 amends the Town and Country Planning Act 1990 to require a local planning authority to have regard to a post-examination neighbourhood development plan when dealing with an application for planning permission, so far as that plan is material to the application.

Section 2 requires a local planning authority to notify the parish council of relevant planning applications if there is a neighbourhood development plan in place. The parish council may notify the local planning authority in writing that they do not wish to be notified of any such application.

Section 3 amends the Planning and Compulsory Purchase Act 2004 to provide for a neighbourhood development plan for an area to become part of that area after it is approved in an applicable referendum.

Section 4 amends the Town and Country Planning Act 1990 to enable a local planning authority to modify a neighbourhood development order or plan, with the consent of the qualifying body for the neighbourhood area, if they consider that the modification does not materially affect any planning permission granted by the order or policies in the plan.

A new process is introduced for modifications that would have a material affect but are not so significant or substantial that they would change the nature of the plan. A qualifying body must submit the proposed modifications to the local planning authority. The procedure then largely replicates the existing process for making a development order, but examiners

are expected to hold hearings only in exceptional circumstances and no referendum takes place. A local authority will be required to make the modified neighbourhood plan if it is recommended by the examiner.

Section 5 amend the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 to facilitate the modification of a neighbourhood area and provide for what happens to a neighbourhood development order or plan that has already been made for that area.

Section 6 amends the Planning and Compulsory Purchase Act 2004, which requires a local planning authority to prepare a statement of community involvement. An authority is now also required to set out their policy for discharging the duty to give advice or assistance to qualifying bodies to facilitate proposals or neighbourhood development plan.

Section 7 allows for regulations to impose duties on an examiner to provide the qualifying body, local planning authority or other specified people with prescribed information and to hold meetings with them. The regulations must also require a draft report with recommendations to be published.

On behalf of councils we argued that the provisions should not lead to an 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. We will continue to call on the Government to undertake a full review of the financial support provided to councils for its statutory duties in relation to neighbourhood planning.

Local development documents

Section 8 amends the Planning and Compulsory Purchase Act 2004 to require local planning authorities to identify the strategic priorities for development in the area and set out policies to address those priorities. Areas are exempt from this requirement if their priorities are addressed in a spatial development strategy that covers their area, for example in Greater London or a combined authority.

Section 9 amends the Planning and Compulsory Purchase Act 2004 enabling the Secretary of State to direct two or more local planning authorities to prepare a joint development plan. The ministerial direction can specify the area and matters to be covered by the joint document and the timeline for its preparation.

Section 10 enables the Secretary of State to invite a county council to prepare a plan for a local planning authority in their area. When the Bill was debated in Parliament, we pushed for assurances that this provision would only be used in exceptional circumstances. In response the Government made clear that this power is only to be used in extremis.

Section 11 amends the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to publish data standards setting the technical specifications for local development schemes and documents produced by local planning authorities. As the Bill was debated we called for draft regulations to be published to allow for effective scrutiny of the provisions. We will continue to call on the Government to ensure that new requirements do not add new burdens to the local plan-making process, or frustrate the ability of local planning authorities to shape and approve developments so that they improve places and local economies.

Section 12 amends the Planning and Compulsory Purchase Act 2004, enabling the Secretary of State to publish regulations prescribing the intervals at which local development documents must be reviewed by local planning authorities. On behalf of councils we argued that the national

planning practice guidance already sets out expectations for revisions and updates to local development plans, and that any additional reviews required by the Government must be fully funded.

Section 13 amends the Planning and Compulsory Purchase Act 2004 to require local planning authorities to set out in their statements of community involvement their policies for involving interested parties in the preliminary stages of plan-making. Throughout the passage of the Bill we argued that councils are best placed to set out how and when they will engage the community and key stakeholders and involve them in the planning process.

We raised concerns about the proposals that would give the Secretary of State new powers over local plans and instead called for a sector-led approach that seeks to understand what the blockages are and resolve them.

Planning conditions

Section 14 provides that a local authority cannot grant planning permission subject to any pre-commencement conditions without first obtaining the applicant's written agreement to the terms of that condition. We opposed this measure and called for local authorities to be able to continue to make any necessary pre-commencement conditions on developers. This section also enables the Secretary of State to make regulations as to what kind of conditions can be imposed on a grant of planning permission, in line with the policy on conditions in the National Planning Policy Framework (NPPF). The Government is required to undertake a consultation before any such regulations can be made.

We have argued that the NPPF, and the associated national planning practice guidance, already sets out expectations on use of planning conditions and that the provisions in the Bill could have a number of unintended consequences. This includes the potential for an increased number of planning applications refusals; statutory timescales for processing planning applications being missed; and the ability of local planning authorities to include conditions to address local area or site-specific issues being restricted.

Permitted development rights relating to drinking establishments

Section 15 requires the Secretary of State to make a development order removing permitted development rights in relation to drinking establishments (Class A4). It comes into force on 23 May 2017.³

Development of new towns by local authorities

Section 16 amends the New Towns Act 1981 to allow the Secretary of State to appoint one or more local authority to oversee the development of a proposed new town in their area. Regulations may be published that set out how the local authority is to oversee the development.

We supported the introduction of this section, arguing that it would provide local accountability for the delivery of sustainable new communities through development corporations.

Register of planning applications

Section 17 extends the scope of the planning register, allowing the Secretary of State to require local planning authorities to include information about specified prior approval applications or notifications for permitted development rights on the planning register. During the passage of the Bill the LGA argued that having access to open data on permitted development would enable increased scrutiny of the impact of national permitted development rights and scale of the uptake, and that any new burdens on councils should be fully funded.

We also highlighted a number of unintended consequences of national permitted development rights, including allowing offices to be converted to residential units without the need for planning permission. In response, ministers stated that the Government will allow Article 4 directions to remove this permitted development right over a larger area than at present, in areas where the local planning authority is delivering 100 per cent or more of

its housing requirement. Ministers also gave assurance that local planning authorities will be able to charge planning applications fees when permitted development rights have been removed.

Part 2: Compulsory purchase

Section 18 gives all those with a power to acquire land, including local authorities, by agreement or compulsorily the power to take temporary possession of land.

Section 19 provides that compulsory temporary possession must be authorised in the same way as the associated compulsory acquisition of land and sets out the information which must be included in the authorising instrument.

Section 20 requires acquiring authorities to give at least three months' notice to those with an interest in the land and occupiers before taking temporary possession and requires the notice to specify the period for which the acquiring authority is to take temporary possession of the land.

Section 21 provides that an owner of the temporary possession land may serve a counter-notice on the acquiring authority within 28 days of the notice of their intended entry limiting the period for which the acquiring authority may take temporary possession to either 12 months for a dwelling or six years in any other case. In response, the acquiring authority may accept the notice and limit the period of temporary possession, withdraw the notice of intended entry, or purchase the owner's interest in the land. It must give notice of its decision within 28 days of the counter-notice.

Section 22 applies enforcement provisions to temporary possession of land, meaning that, where a person refuses to give up possession, an acquiring authority can issue their warrant to a sheriff or enforcement officer to gain possession.

³ Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2017 <http://www.legislation.gov.uk/uksi/2017/619/contents/made>

Section 23 provides that those with an interest in the land, or a right to occupy the land, are entitled to compensation for any loss or injury sustained as a result of the temporary possession. It must take into account the value of a leasehold interest in the land for the period of temporary possession.

Section 24 provides for the advance payment of any compensation if requested in writing by the claimant.

Section 25 requires the acquiring authority to pay interest on any outstanding amount of an advance payment of compensation still due after the date on which it should have been paid.

Section 26 provides that temporary possession land is included in the list of categories of land which are blighted land.

Section 27 allows the acquiring authority to use the land as if it had acquired all interests in it and provides the power to remove or erect buildings and remove vegetation. This power is subject to limitation of the use to the purposes for which the land was acquired.

Section 28 ensures that a person is not treated as being in breach of any term of a tenancy if they cannot reasonably comply as a result of temporary possession.

Section 29 enables the Secretary of State to make regulations in relation to the power to take temporary possession.

Other provisions relating to compulsory purchase

Section 32 clarifies the principles and assumptions for the 'no-scheme world' used to assess compensation for land taken by compulsory purchase. It takes into account the existing case law and judicial comment.

Section 33 repeals Part 4 of the Land Compensation Act 1961 so that a claimant is no longer entitled to claim additional compensation where, within ten years of the completion of the compulsory purchase by the acquiring authority, a planning decision is made granting consent for additional development on the land.

Section 34 introduces a six-week statutory time limit for issue of confirmation notices served by the acquiring authority to every owner, tenant and occupier, notices affixed on or near the land in question, and in one or more local newspaper. A longer time period may be agreed in writing between the acquiring authority and the confirming authority.

Section 35 brings the assessment of compensation for disturbance for minor and unprotected tenancies into line with that for licenses and secure tenancies by providing that regard should be had to the likelihood of the tenancy to be continued or renewed, the period for which it might reasonably have been expected to continue, and under what terms and conditions.

Section 36 applies where the Greater London Authority and Transport for London agree that the purposes for which they may acquire land compulsorily would be advanced by one or both of them acquiring land for a joint project. It enables either body to acquire all the land required for a combined transport and regeneration or housing scheme on behalf of the other.

Section 37 amends the provision for overriding easements in the Housing and Planning Act 2016 to ensure they work as intended for the GLA and TfL.

Sections 38 to 41 make technical amendments to the provisions on advanced payments of compensation.

Throughout the passage of the Bill, we argued for further reforms to make the process for compulsory purchase clearer and faster. This included: local authorities being able to acquire land at closer to existing use value, to capture more uplift in land value for infrastructure and community benefits; stronger compulsory purchase type powers where planning permissions have expired and development has not commenced; a default position that all decisions on confirmation of a compulsory purchase order are delegated to the acquiring authority; and a more fundamental consolidation and streamlining of the legislative provisions for compulsory purchase.

Thank you

As the legislation went through Parliament we worked closely with our Vice-Presidents, as well as other MPs and peers, briefing them ahead of debates and suggesting amendments. On behalf of local government, we are grateful to all those parliamentarians who supported us and championed our concerns and arguments.

Useful links

For the full text of the Act, please refer to: www.legislation.gov.uk/ukpga/2017/20/contents/enacted

For the LGA's briefings on the Bill, please go to: www.local.gov.uk/parliament/briefings-and-responses

For more information about the LGA's work on housing and planning, please go to: www.local.gov.uk/topics/housing-and-planning

For the LGA Housing Commission final report, please go to: www.local.gov.uk/lga-housing-commission-final-report



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