

Localism Bill

House of Lords Second Reading

CPRE Briefing, June 2011

The protection of the countryside and the sustainable development of land requires a strong and locally accountable planning system. The Campaign to Protect Rural England (CPRE) welcomes the Government's aspiration to empower communities by increasing their involvement in shaping the areas in which they live and work. To achieve that aim we believe the Localism Bill should:

- Reinforce the role of the planning system in securing development which is environmentally sustainable with a robust definition of sustainable development on the face of the Bill;
- Safeguard the fundamental principle that planning permission should not be unduly influenced by financial considerations;
- Ensure that neighbourhood planning is open and accessible to all communities and the different options available for neighbourhood planning should not undermine each other;
- Re-balance the appeals process by giving communities the right to challenge decisions that go against locally agreed plans or where a planning authority faces a conflict of interest, and by restricting the grounds on which local decisions can be overturned on appeal;
- Ensure that the 'duty to cooperate' promotes cross boundary collaboration at the plan-making stage and as plans are implemented in order to ensure environment protection and enhancement; and
- Provide communities with a stronger system to protect assets of community value through the 'community right to buy' by giving them a first right of refusal.

We urge Peers to scrutinise the Government's proposals closely, seek greater clarity on the effect of the proposed changes and secure improvements to the Bill where necessary.

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Introduction

CPRE has believed for a long time that the involvement of local people in the planning system can lead to better decision-making. We therefore welcome the Government's aspiration to empower communities by increasing their involvement in shaping the areas in which they live and work. Only with a fully accountable, fair and transparent planning system, which responds to community concerns, can public confidence in planning and its ability to safeguard the environment while securing necessary development be ensured.

We believe that the proposed reforms have the potential to revitalise the planning system. In its current form, however, the Localism Bill presents threats as well as opportunities for communities and the countryside. We urge Peers to scrutinise the Government's proposals closely, and seek clarification of the implications of the proposed changes and secure improvements where necessary. Areas where CPRE has particular concerns are set out below.

The role of planning (clause 124)

It is essential that the principal role of land-use planning, which should be to achieve genuinely sustainable development, is not undermined as these reforms are taken forward. In his Budget speech in March the Chancellor described the planning system as a 'chronic obstacle to economic growth' and suggested there should be a default 'yes' to development. CPRE believes that rather than being a barrier, the planning system can help to deliver long term, sustainable development that brings economic, environmental and social benefits.

CPRE recognises the need to revive the economy but the planning system should not be viewed simply as a tool of economic policy. If it is not underpinned by the principles of sustainable development, which require environmental, social and economic issues to be given equal consideration, economic growth in the short term is likely to result in unforeseen and undesirable environmental and social issues in the longer term. Critically, planning exists to deliver decisions on land use in the public interest, for the long term benefit of the nation as a whole and not for any particular sector or short term interest.

The statutory purpose of planning, currently set out in section 39 of the *Planning and Compulsory Purchase Act 2004* (as amended) is to achieve sustainable development. This purpose should also apply to the new neighbourhood planning regime and would be reinforced by defining sustainable development in the Bill.

We also urge Peers to scrutinise clause 124, added by the Government at Commons Report Stage, closely. This clause enables non-land use related financial benefits to be a material consideration in determining planning applications. Such financial benefits include the New Homes Bonus, by which Government will reward local authorities financially for new homes that are built in their area. We believe that as currently worded this clause could fundamentally distort the planning system by encouraging local authorities to base decisions on short term financial implications rather than the land use merits of the proposed development. We believe it should be removed from the Bill or amended to ensure clarity about when a financial consideration might legitimately be considered material, and that financial considerations are not elevated above all other material considerations.

Neighbourhood planning (clause 101, schedules 9, 10 and 11)

CPRE has welcomed the Government's aspiration to encourage local people to get more involved with planning. We support the proposal that neighbourhood plans that have sufficient local support will become part of the development plan. We believe that if these plans are to be successful, local people will need to have access to a sound evidence base and the process for developing them will need to be jargon-free, open and accessible. We are concerned, however, that the proposals set out in schedules 9, 10 and 11 of the Bill, which will introduce neighbourhood development plans, neighbourhood development orders and community right to build orders, are too complex and will discourage communities from getting involved.

We are also concerned that processes to develop community right to build orders will be able to run in parallel, and therefore bypass, other neighbourhood planning processes. Schedule 11 states that a local planning authority could only decline to consider a community right to build order if they are already considering another order and the 'development and site to which the proposals relate are the same'.

This suggests a community right to build order should be considered, even if it is substantially different to what is being promoted by a neighbourhood plan which has been developed by a parish council in close consultation with a local community. As currently conceived we do not believe that community right to build orders should be taken forward as part of the reforms. In the interests of delivering a more streamlined planning system that is open and accessible to all, we believe that subsection 3 of clause 101 should be reconsidered.

CPRE agrees that the neighbourhood planning system needs to be accessible to the whole community and that business interests are an important part of many communities. Where relevant, therefore, we believe local businesses should be involved in the development of draft neighbourhood plans. We believe that the requirement that Forums should be established with the express purpose of 'furthering the social, economic and environmental well-being' of those in the area is appropriate in the context of the overriding purpose of planning being to achieve sustainable development. We are concerned, however, that, following the Budget, the purposes for which Neighbourhood Forums can be established have been amended to give priority to short term economic interests over other issues.

Rights of appeal

CPRE is disappointed that, despite pre-election pledges by both governing parties, a limited community right of appeal has not been included in the Bill. Such a right should be seen as a vital part of localism, necessary to ensure the Government's reforms realise their full potential.

We recognise that there would need to be limitations to ensure that such a right could not be abused to act as a general block to development. A community right of appeal should only be triggered where a decision to grant planning permission is not in line with an adopted local or neighbourhood plan, or where the local authority has a financial or other interest. Recent Government statistics show that the vast majority of applications, more than 99.8%, would be unaffected by the introduction of this safeguard.¹

During debates in the Commons the Government argued that a community right of appeal was unnecessary as the new system promoted a collaborative approach to plan-making, which would ensure the views of communities were central to plans. While we welcome that approach we continue to believe that the creation of a limited 'community right of appeal' is necessary as a critical safeguard to prevent decisions that go against an agreed development plan.

CPRE is concerned that the current planning system is manifestly unfair and allows big business to intimidate local authorities and communities. An example of this is where supermarket developers are able to submit appeal after appeal until they succeed in gaining planning permission. For this reason, we believe the introduction of a limited community right of appeal should be accompanied by restrictions on the existing blanket right of appeal for developers. Such reforms would help ensure that neighbourhood and local plans are meaningful and that local authorities are not bullied by developers into accepting otherwise undesirable development.

Strategic planning (clause 95)

Following the abolition of regional plans, clause 95 introduces a 'duty to cooperate' for local authorities and any other person or organisation involved in planning for sustainable development. We recognise that regional plans, and in particular their top-down housing targets, caused much concern at the local level. We believe that a strategic approach is necessary, however, to ensure appropriate consideration is given to issues that cut across administrative boundaries. This will be key to delivering landscape scale conservation, which we expect to be an important feature of the

forthcoming Natural Environment White Paper. The Government amended the ‘duty to cooperate’ at Commons Report Stage to strengthen it, but questions remain about how the duty will be enforced.

We also have concerns about the influence the Government appears to be giving to local enterprise partnerships through this legislation. At Commons Report Stage the Minister Greg Clark stated that he hoped and expected ‘that local enterprise partnerships will use their planning powers to pool some of their policies relating to the development of the economy’.² We do not believe the Government should be giving planning powers to local enterprise partnerships, given their undemocratic nature.

Enforcement (clauses 108 - 111)

Effective enforcement of planning controls is crucial to the credibility and effectiveness of the planning system. If local communities are to be more involved, and neighbourhood plans to have a positive impact, abuse of the planning system needs to be prevented. We therefore welcome much of chapter 5.

CPRE has serious concerns, however, about the proposed time-limited immunity for planning enforcement. Enforcement is commonly under-funded in local authorities and so detecting breaches of planning control can take time. We are pleased that clause 109 tackles the issue of concealed breaches, but time-limited immunity can be seen as legitimising inappropriate actions as long as they remain undetected for a certain period of time. To address this, we believe that clause 110 should be amended to remove the provisions that proceedings for non-compliance with Tree Preservation Orders, or the enforcement of controls over outdoor advertising, cannot be commenced more than three years after the offence was committed.

Effective community empowerment (clauses 74 - 85)

The Bill currently provides that if and when an asset registered on a local authority’s list of assets of community value becomes available for sale, the sale will be paused for a given period of time (to be defined by regulation), within which the community will be able to register an interest in its purchase. We welcome the introduction of a ‘community right to buy’ but we are concerned that it does not go far enough to ensure that communities will be able to acquire locally important assets if they are to be sold.

In an interview with CPRE’s President, Bill Bryson, in March 2010, David Cameron, then Leader of the Opposition, set out his ideas on this right stating:

*“So, if it’s the last post office, the last shop in the village, or if it’s a bit of council property that’s being left to go to waste, the community would have the first right of refusal to take it over.”*³

We do not believe that the provisions in the Bill go far enough for communities. Even with the opportunity to register their interest, they will still find it difficult to compete and succeed in acquiring important community assets. We would like to see stronger provision for communities to protect assets so they have a ‘right of first refusal’ on listed assets. We note that in Committee Stage debates the Minister, Andrew Stunell MP, stated a first right of refusal could be created using regulation.⁴ We encourage Peers to seek further reassurance from the Government on this issue.

Conclusion

CPRE welcomes the Government’s aspiration to increase community involvement in decision making. We are concerned, however, that reforms to the planning system should not place undue weight on short term economic considerations at the expense of environmental and social objectives or the wider public interest. The neighbourhood planning system is welcome but will only be used by communities if it is fair and accessible, and operates in their interests. CPRE believes that a limited community right of appeal is essential so that development is in line with the views of communities, as set out in neighbourhood plans. These measures, alongside greater powers to enforce planning controls, will go a long way towards rebuilding public confidence in planning and its ability to achieve genuine sustainable development.

¹ HC Deb, 13 Sep 2010, cc 757-8W

² Localism Bill 2011, House of Commons Report debate, 1st session, 17 May, c 263

³ Times Magazine (20 March 2010) *Bill Bryson talks to the Party Leaders about countryside issues*

⁴ Localism Bill 2011, House of Commons Committee debate, 13th sitting, 15 February, c 530