

Appendix A

LGA Briefing – House of Lords Second Reading

8 January 2013

- This **Bill presents an ideal opportunity** to empower local areas to drive economic growth. However **as currently drafted the Bill will miss that opportunity** and risks failing to deliver the growth we need. This is because of its focus on planning which is not a barrier to growth.
- The LGA would like to see a focus in this Bill on the real barriers to growth and much needed house building – access to finance to build and to buy.
- **The Bill seeks to tackle a non-existent barrier.** The planning system is supporting and approving sustainable development:
 - There is a building backlog of 400,000 new homes with planning permission, but yet to be built by developers;
 - Approval for residential and commercial applications are at a record ten year high;
 - 87% of applications were approved in 2011/12.
- The Bill in its current form **represents a blow to local democracy**, by taking authority away from democratically accountable and locally elected councillors and placing it instead with the Planning Inspectorate (PINs), a national unelected quango.
- The Bill **moves away from the localism agenda** by proposing a significant expansion to the power and role of the Inspectorate, expanding resources which would be better offered to properly empower local planning authorities.
- The measures within the Bill are likely to be **counterproductive** in terms of stimulating growth, since the removal of local decision making risks seriously denting trust at the local level. This could mean some communities are likely to be increasingly reluctant to accept new development in their areas. The Bill is also **likely to cause significant delay** as the legislation is finalised and ensuing appeals take place.

Designation of councils and determination of planning applications by the Secretary of State (Clause 1)

- Clause 1 reflects the Bill's **misconceived focus on planning, which will not tackle the barriers to growth i.e. access to finance to buy and to build:**
 - Gross mortgage lending was 61% lower in 2011 than in 2007;
 - the number of mortgages fell by 50% between 2007 and 2011; and
 - The average deposit for a first-time buyer is over £26,000, doubling since 2007 in a period when incomes have declined.
- Clause 1 is **unnecessary since councils are overwhelmingly saying 'yes' to development through the planning system:**
 - 2011/12 saw a 10 year high in percentage of applications approved for all types of development (87% of applications were approved)¹.

¹ <http://tinyurl.com/c8c289a>

- 400,000 homes have planning permission but are yet to be built²
- Clause 1 **moves away from the localism agenda**. Shifting authority to the Planning Inspectorate (PINs), will remove local accountability and risks denting the trust of communities. It will also require a significant injection of funding. It makes more sense to prioritise funding for swift decisions at the local level, than to expand an unelected quango.
- Clause 1 maybe **counterproductive**, as the **criteria for measuring performance** (time taken and number of approvals given) will result in a focus on blunt targets, driving unintended consequences and behaviours. The focus should be on the outcome – better to take an extra week and get an application approved, than rush the decision and have it rejected in order to meet centrally set timeframes.
- Similarly, this Clause could **slow the system down, and with it economic growth**, by driving up application refusals close to the deadline in situations where applicants have not negotiated planning performance agreements. This has not been appreciated by DCLG or HMT and must be addressed.
- Clause 1 could be **unworkable** in terms of driving improvement or speeding up appeals since small planning authorities may only have two or three major applications a year, which will heavily skew their figures. It is also unclear how an authority can demonstrate improvement if they're no longer dealing with major applications.
- If DCLG's aim is to target a small number of authorities, this Clause is a sledge hammer to crack a nut. A more targeted approach would be for central Government to look to the sector (supported by the LGA) to help councils that might have performance issues ahead of any intervention. The LGA would therefore like the Clause **amended in order to introduce an 18 month time period** between identification of poor performance, and central intervention.

Limiting the information that local planning authority can require to that which is 'reasonable' (Clause 5)

- This clause is **unnecessary** and represents a move away from the localism agenda. **There is already a clear steer to local authorities within the National Planning Policy Framework (NPPF)** regarding information requests. Further clarification through primary legislation is completely unnecessary and based on anecdotal rather than clear evidence.
- The NPPF states: "Local planning authorities should publish a list of their information requirements for applications, which should be proportionate to the nature and scale of development proposals and reviewed on a frequent basis. Local planning authorities should only request supporting information that is relevant, necessary and material to the application in question."³

² <http://tinyurl.com/byb462w>

³ See paragraph 193 at <http://tinyurl.com/abvfzc2>

Modification or discharge of affordable housing requirements secured through Section 106 agreements (Clause 6)

- This clause **will not stimulate economic growth** because changes to s106 agreements will not address the wider market issues which relate to demand and access to mortgage and development finance.
- Clause 6 **is unnecessary** because councils are already responding to changed economic circumstances by renegotiating s106 agreements voluntarily. Recent research shows only 2% of councils⁴ would refuse to renegotiate and in the majority of situations councils are willing to accept a level of affordable housing a round a third lower than set out in the Local Plan.
- The clause **centralises authority and resources with the Planning Inspectorate (PINs), rather than locally with planning authorities.** Clause 5 will require a significant expansion of the function, responsibilities and resources of PINs at the expense of local decision making. Such funds could be better spent on properly resourcing planning authorities at a local level.
- The clause **moves away from the localism agenda.** Assessing viability of development is not an exact science and is dependent on many varied local factors. Viability decisions are therefore best made at the local level. The LGA is concerned that the proposal will take no account of the judgement and financial assessment of the authority with regard to the viability of a specific site balanced with its affordable housing needs.
- **By risking delays to economic recovery, Clause 6 may prove counterproductive.** Housing developments are stalled now and the country cannot afford to wait for Royal Assent, and the resulting appeals to take place. This legislation unintentionally encourages developers to hold off on development until the proposals are implemented, in the hope they can achieve a better deal. Clause 6 may also lead to time and resources being spent locally and centrally on cases where viability may not be a genuine problem.
- **The proposal will put the provision of affordable housing at risk.** DCLG's own impact assessment highlights a potential impact on 333 to 666 sites. **The Clause de-prioritises affordable housing below other elements of s106 agreements** such as skate parks and art on bus shelters. Councils believe affordable housing is a high priority for local residents.

Amendments to the Communications Act (Clause 8)

- This Clause facilitates DCMS' 7 September 2012 announcement that "broadband street cabinets can be installed in any location other than a Site of Special Scientific Interest without the need for prior approval...without any conditions."
- **These proposals take the democratic right away from people to have a say over the location of six-foot high junction boxes and overhead poles in the hearts of their communities.** Decisions on where to place broadband infrastructure must balance the local environmental and economic impacts.

⁴ See page 6 of the research available in full on our website at <http://tinyurl.com/dxwgkee>

- Ministers must offer the strongest reassurance possible that this will not open the door to uncontrolled building of mobile masts in beauty spots, historic locations, or next to schools, and explain that reassurance will be given effect. Councils are extremely concerned that conservation areas are not exempt from the proposals.
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Registration of town and village greens (Clause 13-15)

- The LGA welcomes these measures to align the town and village green regime into the planning system. Traditional and genuine village greens are vital elements of sustainable and vibrant communities, and will not be endangered by these Clauses.
 - These proposals are essential to align the town and village green regime with the planning system. This will ensure that discussions about the future of sites take place primarily through the democratically accountable planning system, removing unnecessary duplication of time and cost.
 - Town and village green legislation can be used inappropriately to block or stall development. Such a technique can delay development for years and cost the council and others involved large sums of money. The current financial climate makes the resolution of this issue urgent.
 - These clauses will ensure false claims are revealed swiftly; all genuine claims receive fair and robust consideration; and the primacy of Local Plans are maintained.
 - The administrative burden involved with processing applications is substantial whilst there is currently only a nominal cost to the applicant. A recent example from a county council cited costs of legal advice at £32,000 for one case alone. It is therefore helpful that the Bill will enable a fee to be charged locally. This should be levied at a rate that is still feasible for local groups – we suggest that this is best determined locally.
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Extending the Major Infrastructure Planning Regime to include commercial and business projects (Clause 24)

- **The cross-party LGA is seriously concerned by the potential implications of Clause 24.**
- This measure could allow for planning decisions of major **local** importance and interest to residents (for example leisure complexes, large offices, and exhibition centres) to be removed from local authority hands and centralised.
- **The LGA maintains concerns on what will potentially constitute business and commercial development**, as set out in DCLG's current consultation⁵. All developments currently under consideration will have major local impact, hence they have to date been dealt with by the local authority.

⁵ The full DCLG consultation can be found at <http://tinyurl.com/cy3nbwb>. The LGA agrees with DCLG that retail projects and mixed use projects which contain dwellings should be exempt from this process.

- Running a consultation at the same time as Parliament's considerations (and not before) makes it impossible to understand the Bill's actual implications.
- The DCLG press statement accompanying the Bill's publication indicated that decisions on such large scale commercial projects will be fast tracked within 12 months. **This would not represent a fast track scheme. Using CLG's own statistics, councils are already determining and approving 87% of relevant large scale major applications within 52 weeks⁶.**
- As with other projects under the nationally significant infrastructure regime, councils will be provided with an option of presenting a local impact report detailing the likely impact of the proposed development on the area. **Such impact assessments come at significant cost to the local authority.** For example; Sedgemoor, West Somerset and Somerset County Council submitted a joint Local Impact Report for Hinckley Point Power Station. The main report is 652 pages long with a separate 12-page executive summary. The report is accompanied by a further 12,500 pages of appendices.

Selection of LGA suggestions on new clauses

The LGA has numerous proposals which it will be urging Parliament to consider in order to ensure the Bill has a positive impact on growth. These will include:

- **Removal, or relaxation, of the housing borrowing cap:** Local authorities have demonstrated their ability to borrow prudentially. Continuing to impose a cap, specifically on housing borrowing is unnecessary and anti localist. Relaxation of the limitations here would delivered 60,000 homes over the next five years and offer a 0.6% boost to UK GDP, without any adverse reaction from economic markets⁷.
- **Mainstreaming the package of benefits delivered through City Deals.** These deals have to date proven their success and the LGA welcomes Government's proposals to roll the initiative out further. We believe the benefits and opportunities should be open to any council or group of councils who can demonstrate the benefits which would be delivered.
- **Improving the involvement of statutory consultees.** To avoid unnecessary delays to development, we would support a system of incentives to ensure statutory consultees highlight early on whether or not they will be responding to applications; and if they are, to ensure they do so within agreed timescales.
- **Improve powers to bring empty properties⁸ back into use and to unblock stalled sites:** The compulsory purchase scheme could be better used if the costs currently borne by local authorities were not so significant and front loaded. We would like to discuss with Government how we can speed up the process, reducing liability for costs up front.

⁶ <https://www.gov.uk/government/publications/growth-and-infrastructure-bill-impact-assessment>

⁷ These points & others are substantiated by the *Let's Get Building* report (Nov 2012) <http://tinyurl.com/cq7xdb2>.

⁸ There are 700,000 in England existing homes sitting underused with many in poor condition and empty for long extended periods of time.

Allowing councils to set their own permitted development framework: A national approach to permitted development and changes of use⁹ will inevitably lead to unintended consequences and adverse impacts in different localities. We propose that a local authority is provided with powers to set out permitted development rights locally – subject to consultation and a local impact assessment. If not, the current tools allowing authorities to amend permitted development rights locally must be improved, allowing speedier use at less cost to authorities. The LGA will also be putting forward proposals to streamline and reduce cost, risk and bureaucracy in the Local Development Order process.

Repeal the need for Secretary of State approval on applications to de-register town and village greens and on the replacement land proposed. Provisions already exist in legislation to allow de-registration of Town and Village Greens. Where the green in question is significant in size (over 200 sq metres) the existing legislation requires replacement land to be identified and then registered as a common or green. Currently the Secretary of State is required to approve all applications (although decision making is delegated to the Planning Inspectorate) at an average cost of almost £5,000 to the applicant. We would like to see a more accountable and streamlined process by devolving decision making to the local authority.

⁹ This would **allow local reforms to the use-class system** which would aid local authorities in tackling the clustering of the same type of outlet (such as betting or fast food shops) where they are experiencing such issues, whilst promoting localities that are attractive to economic investment.