

## Greenest Planning Ever Coalition

### Localism Bill Briefing House of Lords, Committee Stage

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Limited community or third party right of appeal

June 2011

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The Greenest Planning Ever coalition believes that a limited community right of appeal against decisions to grant planning permission should be included in the Localism Bill. Where planning decisions are not in line with an agreed development plan, and are against the wishes of the local community, we believe that members of the affected community should be able to question them through an appeals process. The introduction of such a right would fulfil pre-election pledges both in the 2010 Conservative Party Green Paper *Open Source Planning* and in the 2010 Liberal Democrat General Election Manifesto.

We believe that the re-balancing of the appeals system is a vital part of localism. We support the Government's intention to make the preparation of plans more collaborative but we do not agree with their claims that this therefore removes the need for a community right of appeal. Rather, it is necessary to ensure the reforms contained in the Bill realise their full potential by ensuring sufficient weight is placed on policies in local and neighbourhood plans by local decision makers. A community right of appeal would also strengthen mandatory pre-application discussions for major developments, which will be introduced by the Bill.

Conversely, these other reforms are unlikely to achieve their full potential without provision being made for a community right of appeal. Mediation in planning disputes has been used successfully in countries such as New Zealand which have the added safeguard of a community right of appeal.

Some opponents to a community right of appeal are concerned that it would be used to block all development. By limiting the right as we have suggested it would only apply to the most controversial planning applications, less than 1% of all planning applications submitted in total. It will not be a brake on all or even most development. The presence of such rights in Australia has not prevented that country from enjoying sustained economic growth in recent years. It will be a safeguard against specific cases of local authorities making significant departures from agreed plans or being bullied into doing so by large developers; or unreasonably approving damaging development in which they have an interest. It should be seen as an essential power of last resort. It could possibly make call ins redundant and reduce the need for judicial reviews of planning decisions.

Too often at present, local planning is typified by large developers railroading unpopular proposals through the planning process, using their unrestricted right of appeal against refusal to wear down local opposition. As John Noble of the British Brands Group has pointed out, 'When it comes to planning permission, local authorities don't feel able to challenge large retailers.' In an April 2011 report for the Association of Convenience Stores, the leading think tank Respublica advocated the introduction of a community right of appeal 'where an approved development contradicts the parameters of an existing neighbourhood plan. This right should include the entitlement to legal support, in order to offset the perceived advantage that major economic players have over local communities and their elected representatives in the planning process by virtue of the legal resources at their disposal.'

The Tesco applications in Sheringham in Norfolk, for example, were rejected twice by local authority councillors (in 2007 and 2010) as well as at appeal following a public inquiry in 2008, due to contravening both local and national planning policies. In October 2010 a further application was granted planning permission by North Norfolk District Council, by a margin of one vote. As the Bill currently stands, situations like this could continue to arise, regardless of whether a neighbourhood plan is in place.

We are also proposing that there should be strict requirements for those appealing to prove that they have standing. These requirements could include having made representations on the original planning application, and some clear connection (such as residency) to the local area.

Amendments to create a community right of appeal were tabled at both Committee and Report stages in the House of Commons by Stephen Gilbert MP. The amendment tabled for House of Lords Committee seeks to address concerns raised at Commons Report, specifically:

- The new amendment makes changes to Section 70 of the Town & Country Planning Act 1990 in order to clarify that it would not be possible to start development before the period for lodging an appeal against the grant of planning permission had expired (subsection 2 of the new clause).
- In order to minimise delays on development resulting from the need to build in additional time for the period of appeal, a time limit of 28 days to lodge an appeal is specified (subsection 4 of the new clause). This is a considerably more exacting time limit than the six month time limit which currently exists for first party appellants. We are, however, keen that concerns about additional time taken in the planning process as a result of a community right of appeal can be effectively addressed. The suggested limit also follows the recommendations of the 2002 report *Third Party Rights of Appeal in Planning*, prepared by recognised experts in the field.
- The amendment clarifies that only certain persons living, working in or representing the area can appeal.
- The Minister expressed concerns about a community right of appeal against local authorities granting planning permission contrary to the advice of their officers, an element of the amendments tabled in the Commons. The Greenest Planning Ever coalition remains of the view, however, that a right of appeal should apply in these situations. We would like to see this issue kept under review if a community right of appeal is introduced into law.

The amendment proposed by the Greenest Planning Ever coalition is set out at Annex A to this briefing. In addition, coalition members are also advocating further amendments to restrict the scope for developers to overturn local authority decisions at appeal. Further briefing materials are available from coalition members.

**Notes:**

This briefing is supported by the following members of the Greenest Planning Ever coalition:

- Badger Trust
- Campaign to Protect Rural England
- Campaign for Better Transport
- Campaign for National Parks
- 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

In addition, this briefing is supported by:

- Association of Convenience Stores

The Greenest Planning Ever coalition is a campaign of the Wildlife and Countryside Link<sup>1</sup> and partners. The Greenest Planning Ever coalition has come together to ensure that the natural environment is at the heart of planning reform. You can find more information about the coalition and our other briefings on our website: <http://www.wcl.org.uk/planningreform.asp>.

**Contacts:**

	<b>Name</b>	<b>Email</b>	<b>Phone</b>
CPRE	Adam Royle	<a href="mailto:AdamR@cpre.org.uk">AdamR@cpre.org.uk</a>	020 7981 2837
Link	Kate Hand	<a href="mailto:kate@wcl.org.uk">kate@wcl.org.uk</a>	02078208600

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<sup>1</sup> 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).

**Annex A - Amendment recommended by the Greenest Planning Ever coalition**

In Part 5, insert the following new Clause and renumber subsequent clauses

Community right of appeal

New Clause

To move the following Clause:—

- (1) The Town and Country Planning Act 1990 is amended as follows.
- (2) Section 70 (determination of applications: general considerations) is amended as follows:
- (a) In subsection 1(a), after the first 'subject to' insert 'subsection 2A and'.
  - (b) After subsection 2 insert-

“(2A) Where the planning authority decides under this section to grant a permission for an application which falls within one of the categories, and meets any of the conditions, specified in section 78 (2A) —

(a) in case no appeal is lodged against the decision, it shall make the grant as soon as may be specified in a development order after the expiration of the period for the lodging of an appeal.

(b) in case an appeal or appeals is or are lodged against the decision, it shall not make the grant unless, as regards the appeal or, as may be appropriate, each of the appeals—

- (i) are withdrawn, or
- (ii) are dismissed by the Secretary of State.”

- (3) In section 78 (appeals to the Secretary of State against planning decisions and failure to take such decisions) after subsection (2) insert—

“(2A) Where a local planning authority grants an application for planning permission and -

(a) the authority has publicised the application as not according with the development plan in force in the area in which the land to which the application relates is situated; or

(b) the application is one in which the authority has an interest as defined in section 316;

certain persons as specified in subsection (2C) below may by notice appeal to the Secretary of State, provided any one of the conditions in subsection (2B) below are met .

(2B) The conditions are:

(a) Section 61W(1) of the Town and Country Planning Act 1990 applies to the application.

(b) The application is accompanied by an Environmental Impact Assessment.

(c) The planning officer has recommended refusal of planning permission.

(2C) Persons who may by notice appeal to the Secretary of State against the approval of planning permission in the circumstances specified in subsection (2A) above are-

(a) any persons who have lodged a formal objection to the planning application in writing to the planning authority for the area in which the land to which the application relates is situated;

(b) Any parish council or neighbourhood forum, as defined in Section 61F, covering or adjoining the area of land to which the application relates is situated; or

(c) other persons at the discretion of a person appointed by the Secretary of State for that purpose.”

(4) Section 79 is amended as follows-

“(a) In subsection (2), leave out “either” and after “planning authority” insert “or the applicant (where different from the appellant);

(b) In subsection (6), after “the determination” insert “(except for appeals as defined in section 78(2A) and where the appellant is as defined in section 78(2B))”.’.