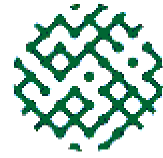
Wildlife and Countryside LINK 

Housing and Planning Bill Briefing

22nd January 2016

Wildlife and Countryside Link (Link) brings together 47 voluntary organisations concerned with the conservation and protection of wildlife and the countryside. Our members practise and advocate environmentally sensitive land management, and encourage respect for and enjoyment of natural landscapes and features, the historic and marine environment and biodiversity. Taken together our members have the support of over 8 million people in the UK and manage over 750,000 hectares of land.

Supported by the following 10 Link members:

- Buglife
- The Woodland Trust
- Friends of the Earth England, Wales and Northern Ireland
- Open Spaces Society
- Wildfowl and Wetlands Trust
- CPRE
- The Wildlife Trusts
- RSPB
- National Trust
- The Wildlife Gardening Forum

For more information contact: Victoria Bankes Price, Chair of Link's Land Use Planning Working Group: 0343 770 5767 / 07766133182

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Wildlife and Countryside LINK

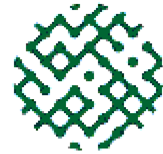
Summary

Wildlife and Countryside Link (Link) recognises that we face a severe housing crisis in England, with hundreds of thousands of new homes needing to be built over the next few years. However, in addition to building quality homes, we also need to build quality places and communities that are great for people, wildlife and the wider landscape, in order to provide developments that are truly sustainable.

The planning system has an important role to play in delivering this vision, and ensuring that it is democratically accountable at the local level. For the planning system to fulfil its role, local planning authorities also need to be properly resourced.

Although we support the Government's aspirations to boost housing development, the Housing and Planning Bill fails to address many of the issues raised in this submission. In particular, we are concerned about the proposals relating to registers of land, permission in principle and Nationally Significant Infrastructure Projects (NSIPs). We therefore propose the following amendments and recommendations and ask that Peers raise these concerns at Second Reading.

- **Clause 136 (Permission in Principle):** We recommend the deletion of Clause 136, or its amendment to mitigate its flaws.
- **Clause 137 (Registers of Land Subsection (14A (1)):** Clause 137 should explicitly state that the proposed registers relate specifically to brownfield land that has been identified as being suitable for housing.
- **Clause 137 (Registers of Land Subsection (14A (3)):** The criterion prescribed by the Secretary of State should exclude land of high environmental value, from the registers on the face of the Bill, as defined (in biodiversity terms) in the Wildlife and Countryside Link guidance note.
- **Clause 137 (Registers of Land, Subsection (14A (4e)):** If sites with insufficient ecological data are included in the registers, they should undergo an ecological assessment before a decision is made on whether or not to award 'permission in principle'. Sites that are found to be of high environmental value (in biodiversity terms) should not be granted 'permission in principle'.
- **Clause 144 (Housing in NSIPs):** We recommend that the amount of housing allowed under this clause should be strictly limited and always be ancillary to a main scheme proposing new energy, transport, water or waste infrastructure.
- **Clause 145-148 (Alternative providers**): We recommend deletion of Clauses 145-148.
- **Clause 125 (Neighbourhood Planning):** A new clause (Clause 125A), promoting a neighbourhood right of appeal, should be inserted after Clause 125.
- **New Clause (Sustainable Development):** The Housing and Planning Bill should provide a statutory definition of sustainable development.
- **Resourcing of local authorities, including provision of ecological expertise and data:** Government should: (i) work with LPAs to ensure that they have sufficient access to good ecological expertise and up-to-date ecological information; (ii) review planning fees, as part of the Spending Review, to allow councils to set their own fees.

Wildlife and Countryside LINK 

1.0 Introduction

1.1 Wildlife and Countryside Link (Link) recognises that we face a severe housing crisis, with hundreds of thousands of new homes needing to be built over the next few years. However, in addition to building houses, we also need to build quality places and communities that are great for people, wildlife and the wider landscape, in order to provide developments that are truly sustainable.

1.2 Whilst the planning system has an important role to play in delivering this vision, this should not be achieved at the expense of planning decisions being democratically accountable at the local level. For the planning system to play its part effectively and efficiently, local planning authorities also need to be properly resourced.

1.3 Although we support the Government's aspirations to boost housing development, the Housing and Planning Bill fails to address many of the issues raised in this submission. We therefore propose a number of amendments and recommendations, as outlined below.

2.0 Clause 136 (Permission in principle for development of land): decisions must be democratically accountable at a local level

2.1 The proposed 'permission in principle' clause is profoundly radical. It allows the Secretary of State to create a development order, for any land allocated for development in a qualifying document (e.g. register, Neighbourhood Plan, Local Plan, etc.), that gives permission to development in principle. It even allows for the granting of permission in principle whether or not the qualifying document is in existence when the development order is made. Whilst the Government's Productivity Plan indicated that the proposals for permission in principal would relate specifically to brownfield land, the Bill itself sets no limitations on the types of development that may be affected by the proposals.

2.2 Permission in principle will severely restrict the potential for local authorities and the public to comment on – or object to - development on these sites. This would ultimately result in local communities being excluded from really being able to shape the places that they live in. Such proposals are in breach of the legally binding Aarhus Convention[1], which was ratified by the UK Government in 2005. In particular, Article 6 of the Convention sets out standards for early public engagement – and sufficient time for effective public participation – in the decision making process. In addition, the proposals are contrary to the Conservative Party's manifesto commitment to '*ensure local people have more control over planning*'. Ultimately, we believe that planning decisions must be democratically accountable at the local level.

2.3 The proposals for permission in principle, as set out in the Bill, also risk creating a variety of mini planning systems alongside each other (e.g. permission in principle via brownfield

[1] United Nations Economic Commission for Europe (1998) *The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.* http://ec.europa.eu/environment/aarhus/

registers and permission in principle via a Local Plan). This would be a difficult system to understand and navigate. This complexity could add cost and time, which would have significant implications for resource-strapped local planning authorities (see comments on resourcing, below).

2.4 Rather than creating new layers of bureaucracy and complexity through new legislation on permission in principle, the current Local Development Order (LDO) process should be used to streamline planning consents on suitable brownfield sites. The LDO process would have the added advantage of providing a statutory mechanism for public consultation and for Environmental Impact Assessments (EIAs) and Habitat Regulations Assessments (HRAs). Using the LDO process would also be more in-line with the proposals that were set out in the Queen's Speech.

2.5 For these reasons, we propose the following amendment to the Bill:

2.6 **Proposed amendment (Clause 136):** We recommend the deletion of Clause 136.

2.7 If this is not possible, we recommend that the following changes are made to mitigate the democratic, public participation and sustainable development implications of the clause:

- Restrict planning permission in principle to housing developments on brownfield land.

- Permission in principle should be restricted to sites on the brownfield register and not extended to other land allocated in local plans, neighbourhood plans, or any other qualifying document.

- Ensure that land of high environmental value is not granted permission in principle.

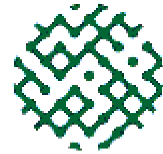
- Ensure that any 'qualifying document' (and sites therein) to be granted permission in principle is consulted and adopted by the local planning authority with its purpose clearly acknowledged.

- Limit the time for the permission in principle to be in force;

- Ensure that the development is EIA compliant, and if is not allow for the permission in principle to be revoked;

- Ensure that flood, ecology, subsidence contamination assessments and any other requisite assessments are carried out before adoption.

3.0 Clause 137 (Local authority to keep register of particular types of land): land of high environmental value must be excluded from the registers of land



3.1 Clause 137 is intended primarily as a means to streamline the development of brownfield land for housing. Redeveloping brownfield land can provide sustainable development opportunities, reduce pressure on the greenfield land, and offer chances to promote economic regeneration. However, a minority of brownfield sites are havens for wildlife, supporting some of the UK's most scarce and threatened species. In many cases, they provide the last 'wild space' in urban areas for local communities, allowing them access to nature and consequently improving the communities' well-being.

3.2 As such, the Housing and Planning Bill – and associated secondary legislation – must provide measures to protect such brownfield land from housing development. Given that the Bill itself does not actually specify brownfield land, the same protection should also be applied to other land of high environmental value that might be considered for inclusion in the registers.

3.3 In this context, there are two issues that we would like to address in relation to Clause 137:

(i) The scope of the proposed registers;
(ii) How land of high environmental value will be addressed when the registers are compiled.

3.4 **(i) The Scope of the Proposed Registers**

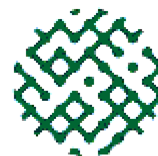
3.4.1 The Conservative Party Manifesto, the Queen's Speech and the Government's Productivity Plan all indicated that the proposed registers of land would relate specifically to brownfield land. However, the Housing and Planning Bill itself does not refer directly to brownfield land in this context. It is only the Bill's Explanatory Notes that makes this reference explicit. This could potentially result in the inappropriate use of registers to facilitate the granting of permission in principle for other types of land. Not only could this undermine the local, democratic accountability currently embedded in the planning system, it could also impose an excessive workload on local planning authorities that are already heavily under-resourced.

3.4.2 For these reasons, we propose the following amendment to the Bill:

3.4.3 **Proposed Amendment (Clause 137):** Clause 137should explicitly state that the proposed registers relate specifically to brownfield land that has been identified as being suitable for housing.

3.5 **(ii) How land of high environmental value will be addressed**

3.5.1 The National Planning Policy Framework (paragraphs 17 – a core planning principle of the NPPF - and 111) states that planning policies should '*encourage the effective use of land by re-using land that has been previously developed (brownfield land), provided that it is not of high environmental value*'. If this national policy is applied to the proposed registers, it would imply that land of high environmental value should not be included on the registers.



3.5.2 Guidance produced by Wildlife and Countryside Link[2] in June 2015 advises that a site should be considered of 'high environmental value', in biodiversity terms, if:

- The site holds a nature conservation designation such as Site of Special Scientific Interest, or is selected as a Local Wildlife Site [and / or]
- It contains priority habitat(s) listed under section 41 Natural Environment and Rural Communities Act 2006.

3.5.3 Excluding land which is known to be of high environmental value (in biodiversity terms) from the registers would be an important first step in ensuring no net-loss of biodiversity on these sites. However, the majority of sites will not have had an ecological survey to assess this value. If such sites are included in the registers, they should undergo an up-to-date ecological assessment before a decision is made on awarding 'permission in principle'.

3.5.4 Whilst brownfield land will be the main initial focus of the proposed registers, the Bill itself does not limit the registers to brownfield land. As such, the same principles should be applied to any land that might be considered for inclusion in the registers in the future (e.g. excluding land of high environmental value from the registers).

3.6 **Proposed amendment (Subsection (1) of Clause 137 (14A)):** The criteria prescribed by the Secretary of State should exclude land of high environmental value, from the registers on the face of the Bill, as defined (in biodiversity terms) in the Wildlife and Countryside Link guidance note.

3.7 **Proposed amendment (Subsection (3) of Clause 137 (14A)):** If sites with insufficient ecological data are included in the registers, they should undergo an ecological assessment before a decision is made on whether or not to award 'permission in principle'. Sites that are found to be of high environmental value (in biodiversity terms) should not be granted 'permission in principle'.

4.0 Clause 144 (Development consents for projects that involve housing): housing should be excluded from the NSIP process

4.1 Clause 144 will allow the Secretary of State to grant consent for housing through the Nationally Significant Infrastructure Projects (NSIP) process, even where there is no functional link between the housing and a nearby NSIP.

4.2 This change will undermine the clarity of the current NSIP process. It could also lead to some unwelcome outcomes which do not encourage well planned communities. For example, an NSIP developer might seek the inclusion of a housing development in the development consent order of up to 500 homes just so that some of the profits from the housing development could help to fund the NSIP.

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[2] Wildlife and Countryside Link (2015) *Open mosaic habitats high value guidance: when is brownfield land of 'high environmental value'?*

4.3 As with the Bill's proposals for 'permission in principle', these proposals pose a significant threat to democratically accountable local planning. As DCLG stated when consulting on this issue in the context of the Growth and Infrastructure Bill in 2012/2013, '*it is the responsibility of local councils to plan to meet housing need locally*'. It is not clear why Government is now taking a different view, given that the housing shortage was already at crisis point at that time.

4.4 For these reasons, we propose the following amendment to the Bill:

4.5 **Proposed amendment (Clause 144):** We recommend the deletion of Clause 144. If this is not possible, we would seek the following amendments: (i) set a limit on the number of houses which could be granted consent through the NSIP process; and (ii) ensure proposals are not extended to housing that does not have a functional link to a nearby NSIP.

5.0 Clause 125 (Local planning authority to notify neighbourhood forum of applications): A neighbourhood right of appeal

5.1 Link urges the Government to introduce a neighbourhood right of appeal into the Housing and Planning Bill. This would strengthen controls against inappropriate development and would sit well with the Government's desire to promote neighbourhood planning.

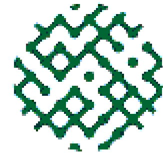
5.2 Currently, only applicants for planning permission can appeal, with no restriction on grounds, to the Secretary of State against a local authority refusal. This can result in large developers railroading unpopular proposals through the planning process, using their unrestricted right of appeal to wear down local opposition. A neighbourhood right of appeal would provide a more balanced approach.

5.3 The neighbourhood right of appeal should be a last resort power. It should only apply to a planning permission (as opposed to a neighbourhood development order) not in line with a made or well-advanced plan. This will ensure that the current system of planning applications is not seen as a more attractive alternative to preparing a neighbourhood plan and/or neighbourhood development order.

5.4 The 2002 report *Third Party Rights of Appeal in Planning* found that the benefits of a carefully limited third party right of appeal, in terms of raising both public confidence and professional standards in planning, outweighed the impacts on developers or the added time taken for the cases in question. The amendment has support from across both the Conservative and Labour parties, as was shown at Commons Report.

5.5 For these reasons, we propose the following amendment to the Bill:

5.6 **Proposed amendment:** A new clause (Clause 125A), promoting a neighbourhood right of appeal should be inserted after Clause 125 (see Annex 1 for draft text).



6.0 New clause: A statutory definition of sustainable development to make it a meaningful, enforceable duty

6.1 The Housing and Planning Bill considers housing in isolation, with no consideration of the context of its location or the components required to create truly sustainable communities. This reflects a more general tendency by Government and local authority decision makers to focus on economic development, often at the expense of other aspects of sustainable development. For example, in the context of Starter Homes, Government has removed the requirement for developers to contribute to infrastructure provision – including green infrastructure, such as sustainable drainage systems - through the Community Infrastructure Levy (CIL) and other tariff style contributions.

6.2 The National Planning Policy Framework (NPPF) identifies that the purpose of the planning system is to contribute to sustainable development, in line with Section 39 of the Planning and Compulsory Purchase Act 2004. However, it does not provide a clear-cut, binding definition of sustainable development. Nor has it resulted in a more balanced approach between the three dimensions - economic, social and environmental - of sustainable development.

6.3 The Housing and Planning Bill provides an ideal opportunity to redress this balance by establishing a statutory definition of sustainable development, which would make it a meaningful, enforceable duty. The definition should be based on the definition originally set out in the Brundtland report[3] and on the five principles set out in the UK Sustainable Development Strategy[4]. A plan-led system must be predicated on the ability of planning authorities to refuse development proposals, where necessary, that are not in accordance with these principles.

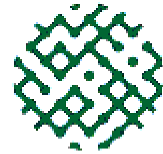
6.4 **Proposed Amendment (New Clause)**: The Housing and Planning Bill should include a definition of sustainable development that draws on the following accepted definition:

‘Sustainable development’ means development that meets the social, economic and environmental needs of the present without compromising the ability of future generations to meet their own needs. The five principles of sustainable development are:

(i) living within environmental limits;
(ii) ensuring a strong healthy and just society;
(iii) achieving a sustainable economy;
(iv) promoting good governance;
(v) using sound science responsibly.

7.0 Alternative providers of planning services

[3] United Nations World Commission on Environment and Development (1987) *Our Common Future*
[4] HM Government (2005) *Securing the Future – delivering UK sustainable development strategy*



7.1 Clauses 145 and 146 give scope for 'alternative providers' to process planning applications in future, rather than the relevant local planning authority. The scope of these powers was not made clear by Ministers in the Commons and as things stand, they could result in private sector providers, or different planning authorities, both processing applications and making binding recommendations to local planning authorities about how applications should be decided. In particular, private providers of planning services could have a 'developer-led' ethos rather than public interest ethos, will not have access to the knowledge that local authority planning teams have, and will, on a case by case basis, not have access or knowledge about those who need to be consulted who may have an interest in the application. Nor will these private providers on a case by case basis have efficient and necessary understanding of the public service provision and infrastructure that underpins successful and sustainable development.

7.2 This also removes further resources from planning authorities who have already undergone serious cuts (see below).

7.3 Clause 146 2(g) is particularly concerning as it makes provision for the **providers** advice to be 'binding' on the local authority. This would seriously undermine local democratic accountability and the public interest ethos of planning. Local authority planning officers regularly provide advice to committees of local councillors, but councillors are required by law to use their discretion to choose whether or not to vote in line with officers' recommendations. Ministers have not made clear how the use of alternative service providers will affect this key part of the local planning process.

7.4 **Proposed amendment:** We suggest the deletion of subsection 2 (g) clause 146.

8.0 Resourcing of local planning authorities, including the provision of ecological expertise and data

8.1 Local Planning Authorities (LPAs) have faced a 46% cut in funding over the past five years, resulting in chronic under-resourcing. A recent survey by the British Property Federation (BPF)[5] has identified that this under-resourcing is the primary cause of the problems facing the planning system today. With DCLG facing a further 30% cut to its budget over the next four years, following Spending Review negotiations, under-resourcing is anticipated to be by far the most significant challenge facing LPAs going forwards.

8.2 This under-resourcing also extends to the provision of ecological expertise, with the Association of Local Authority Ecologists (ALGE) reporting that only a third of local

[5] GL Hearn & British Property Federation (2015) *Annual Planning Survey 2015: Key findings – a system on the brink?*

authorities have an in-house ecologist[6] and that the majority of local authority planners lack ecological qualifications and have had very little ecological training[7].

8.3 Without sufficient resourcing of LPAs, the planning system will continue to face long delays, providing limited scope for LPAs to pro-actively address the housing crisis. Equally, without the provision of adequate ecological expertise and data, planning decisions are likely to be seriously flawed, potentially resulting in the loss of some of our most precious wildlife sites and delivering a net-loss in biodiversity.

8.4 **Recommendations:** Government should:

- work with LPAs to ensure that they have sufficient access to good ecological expertise and up-to-date ecological information;
- review planning fees, as part of the Spending Review, to allow councils to set their own fees.

ANNEX. New clause (Clause 102A) on a neighbourhood right of appeal

102A A Neighbourhood Right of Appeal

(1) After section 78 of the Town & Country Planning Act 1990 (appeals to the Secretary of State against planning decisions and failure to take such decisions) after subsection (2) insert—

"(78A) **A Neighbourhood Right of Appeal**

(1) Where a planning authority grants an application for planning permission and—

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

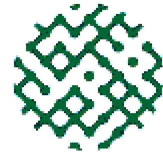
(b) the application does not accord with policies in an emerging neighbourhood plan; certain persons as specified in subsection (2) below may by notice appeal to the Secretary of State.

(2) 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 any parish council or neighbourhood forum by two thirds majority voting, as defined in Section 61F, covering or adjoining the area of land to which the application relates is situated.

(3) In this section:

[6] Association of Local Government Ecologists (2012) *Implications of the Comprehensive Spending Review on biodiversity work within local government*

[7] Oxford, M. (2013) *Ecological Capacity and Competence in English Planning Authorities. What is needed to deliver statutory obligations for biodiversity?* Report published by the Association of Local Government Ecologists



‘emerging’ means a neighbourhood plan that is being examined, or is due to be examined, having met the public consultation requirements necessary to proceed to this stage.

(2) Section 79 of the Town & Country Planning Act 1990 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 78A and where the appellant is as defined in section 79 (2B)).