Wildlife and Countryside LINK

Greenest Planning Ever Coalition

Localism Bill Briefing
House of Commons, Report Stage

Limited community or third party right of appeal 3 May 2011

> *'We will create a third-party right of appeal in cases where planning decisions go against locally agreed plans'* Liberal Democrats (2010) Manifesto
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> *'We will make the system symmetrical by allowing appeals against local planning decisions from local residents, as well as from developers'*
> Conservatives (2010) Open Source Planning Green Paper

1. A limited community right of appeal against decisions to grant planning permission should be seen as a vital part of localism and is necessary to ensure the reforms contained in the Localism Bill realise their full potential. It would also introduce more symmetry to the appeal process, something both Coalition parities have recognised in the past is necessary. Where decisions are taken that are not in line with an agreed development plan, and are against the wishes of the local community, we believe that members of the public with proven standing should be able to question this through an appeals process.

2. Pledges were made to introduce such a process by both Coalition parties prior to the 2010 General Election. In Commons Committee on 10 March 2011, Stephen Gilbert MP tabled an amendment that would have had the effect of introducing a limited community right of appeal. This amendment has been tabled again ahead of Report Stage as New Clause 4, which we encourage MPs to support. During Committee Stage the Minister, Greg Clark MP, raised a number of issues by way of explaining why the Government has not yet included provision in the Localism Bill. This briefing discusses those issues and suggests how they might be resolved in the hope that a limited community right of appeal will become part of the Localism Bill.

> Greg Clark: …*When we were in opposition, we considered, in our reforms to the planning system, whether it was right to establish a third-party right of appeal. At the time, however, there was not the degree of progress in devolving power to neighbourhoods that the Bill proposes. We want communities to have much greater ability to use plans to shape their future. We want to move away from a reliance on the appeals mechanism for resolving such matter*s …
> Localism Bill 2011, House of Commons Committee debate, 23rd sitting (10 March 2011), c.934

3. We welcome the Government's intention to reduce the need for appeals by encouraging a more collaborative approach to plan-making. However, the proposed new system does not remove the need for a community right of appeal. We believe such a right would actually encourage more people to undertake neighbourhood plans by acting as a safeguard so people could be confident their neighbourhood plan would be given weight by decision makers. In order to promote the plan-making process the right of appeal would only apply for a planning permission not in line with the development plan (which would include any adopted neighbourhood plan), or where the local planning authority has a direct interest.

4. 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**1** 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*.'**2**.

5. 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.

> Greg Clark: ... *if there are to be exceptional departures from the plan, who should decide whether that is in the community's interest? We have a choice between an unelected body - the Planning Inspectorate based in Bristol - or elected local councillors. It is consistent with the type of approach that we want that that power should be vested in local democratically elected and accountable people. They have access to members of the community. They represent the community. They can make a more sensitive judgment than would be possible if the matter were contracted to a third party.*
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> Localism Bill 2011, House of Commons Committee debate, 23rd sitting (10 March 2011), c.935

6. The Greenest Planning Ever coalition agrees in principle with the Minister that the vast majority of planning decisions should be made locally and through democratic means; The Sheringham case in 5 above is not a good example of local democracy being strengthened and respected. A community right of appeal would only apply in the most controversial 1% or so of cases, where the local authority itself has given notice that the application is contrary to its own, collaboratively developed, plan. Where communities have invested time and effort into shaping a local plan, perhaps even producing their own neighbourhood plan, that community should have the right to question a local authority if approves a planning application contrary to that plan. In this situation we would argue that it is appropriate for the independent Planning Inspectorate to consider the case.

7. Furthermore, it should be a power of last resort. The greater use of mediation could help reduce the need for appeals by any party. In June 2010, the Planning Inspectorate and National Planning Forum cited New Zealand's Environmental Court as a model of good practice in using mediation. New Zealand has an established public right of appeal against the grant of planning consent. The Court achieved agreement in 40% of the 449 cases where mediation was employed in 2006-7, therefore substantially reducing the number of cases being determined by appeal. The presence of a community right of appeal is therefore an active incentive for both developers and planning authorities to focus their efforts on both plan-making and pre-application discussions, and to involve local communities in such discussions.

1 A membership organisation of leading brand manufacturers (www.britishbrandsgroup.org.uk).

2 Respublica, The Right To Retail, April 2011, p.35.

> Greg Clark: *I would regret my hon. Friend's new clause resulting in extra cost, delay and uncertainty in applications, when part of the point of pre-loading things into plans is the ability to reduce some of that uncertainty and delay.*
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> *Business organisations and many of the developers that will need to invest in our infrastructure, particularly in local infrastructure, are concerned that the proposal would introduce greater expense and delays into the system.*
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> Localism Bill 2011, House of Commons Committee debate, 23rd sitting (10 March 2011), c.936

8. The appeals system cost £25 million in 2007/8 and there were 22,897 appeals. The decrease in appeals of around 12% from this figure in 2008/9 was due mainly to the economic downturn. To both prevent costs from spiralling as the economy recovers and to help meet the UK's obligations under the Aarhus Convention, the right to appeal should be more fairly distributed across society as a whole, with the existing privileges of developers limited.

9. In some recent cases such as in South Somerset and West Yorkshire, local people have overwhelmingly voted against controversial planning proposals in a parish referendum under existing powers. Separate to the referendums on neighbourhood plans the Localism Bill also includes powers to give citizens wider powers to call for local authority-wide referendums on an as yet unspecified range of 'local issues'. However, it is important to note that referendums could involve significant expense to the taxpayer if repeatedly invoked in planning cases, likely to be far greater than those imposed by a community right of appeal. Based on figures quoted by the Minister, Andrew Stunell MP, in Committee on 3 February, if a referendum in a parish of 1,000 people is not held at the same time as an election, it would cost (at £1.50 per head**3**) £15,000, and many times more if held over a wider local authority area. Yet, as can be seen from the 2007/8 figures quoted above, the average cost of a planning appeal is (at just over £1,000) less than 10% of this. We recognise that a community right of appeal could potentially lead to a very different outcome to a referendum (i.e. a major modification or outright refusal of planning permission compared to something which a local authority merely has to take account of). Nevertheless, if a community right of appeal is introduced, it could reinforce the case for the Government or local planning authorities to expressly exclude planning cases from the definition of 'local issues' to be used in deciding when local referendums take place.

10. Appellants also had until very recently the right to insist on a public inquiry or hearing. The Planning Act 2008 gives the Inspectorate the power to decide the most efficient method of examination. This power will be crucial in making a rebalanced system work efficiently. The holding of hearings at the request of appellants was estimated by the Government to cost an additional £1.2 million in 2006-7, a cost which could have been avoided had the power had been in place. Many of the developer arguments about additional delay were made before the Government announced either details of neighbourhood planning or (in the 2011 Budget) its intention to set mandatory 12-month time limits on the determination of all planning applications and appeals. In principle we would support the introduction of mandatory time limits for determining all appeals, including those that arose from a community right of appeal.

11. New Clause 4, which is set out in Annex A of this briefing, takes forward the principle of a community right of appeal, with some differences to that proposed by the Greenest Planning Ever coalition. The amendment proposed by the Greenest Planning Ever coalition is set out in our earlier briefing for Committee stage, available on request.

3 For referendums held at the same time as an election, the Minister quoted a figure of 50p a head.

This briefing is supported by the following organisations in the Greenest Planning Ever coalition:

- Campaign for Better Transport
- Campaign to Protect Rural England
- Campaign for National Parks
- Environmental Law Foundation
- Friends of the Earth England
- National Trust
- Royal Society for the Protection of Birds
- The Wildlife Trusts
- Woodland Trust
- WWF-UK

The Greenest Planning Ever coalition is a campaign of Wildlife and Countryside Link[4] and partners, and it aims to ensure that the natural environment is at the heart of planning reform.

In addition, this briefing is supported by:

- Association of Convenience Stores

Contacts:

	Name	**Email**	**Phone**
CPRE	Adam Royle	AdamR@cpre.org.uk	020 7981 2837
RSPB	Laura MacKenzie	Laura.MacKenzie@rspb.org.uk	07525 992 162
WCL	Kate Hand	kate@wcl.org.uk	020 7820 8600

4 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 - New Clause 4

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

Community Right of Appeal

Stephen Gilbert

To move the following Clause:—

'(1) The Town and Country Planning Act 1990 is amended as follows.

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

(2B) Persons who may by notice appeal to the Secretary of State against the approval of planning permission in the circumstances specified in subsection (2A) are—
(a) the ward councillor for the area (if that councillor has lodged a formal objection to the planning application in writing to the planning authority), or where there is more than one councillor, all councillors by unanimity;
(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, by two-thirds majority voting; or
(c) any overview and scrutiny committee, by two-thirds majority voting.

(2C) 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; and
(c) the planning officer has recommended refusal of planning permission.".

(3) Section 79 is amended as follows—
(a) in subsection (2), leave out "either" and after "authority", insert "or the applicant (where different from the appellant)";
(b) in subsection (6), after "determination" (where it first appears), insert "(except for appeals as defined in section 78(2A) and where the appellant is as defined in section 78(2B))."'.