

Greenest Planning Ever Coalition

Localism Bill Briefing House of Lords, Third Reading

Third Reading

October 2011

Summary

This briefing paper sets out the Greenest Planning Ever coalition's priorities for the Localism Bill.¹ We believe that the planning system is a fundamental mechanism for the promotion and achievement of sustainable development. The Localism Bill must reinforce the planning system's primary role in the integrated delivery of economic, social and environmental objectives. This can be achieved by:

- Providing for the adoption of a clear and robust definition of sustainable development;
- Removing clause 142 to ensure that financial considerations do not unduly influence decision-makers.

Sustainable development

Sustainable development must be at the core of the Government's planning policies at national and local level. This will help to stimulate economic development while ensuring that we live within environmental limits in a strong, healthy and just society.

During this period of reform, it is important to have clarity on the purpose of the planning system and what we are planning for. Alongside the need to revive our economy and cut public debt, the UK is facing unprecedented challenges including climate change and biodiversity loss. If we are to facilitate the development that our country needs, whilst protecting our natural environment and tackling climate change, we must ensure that decision making achieves sustainable development. To do so effectively, sustainable development must be embedded at the very core of the planning system. The Localism Bill could realise this ambition by strengthening the role of local planning authorities in promoting sustainable development and providing for the adoption of a robust definition of sustainable development.

We are concerned that the Government is currently using the term 'sustainable' development to promote economic growth, without recognising that growth which fails to respect environmental limits will ultimately be unsustainable and, therefore, self defeating. We have seen this reinforced in the draft National Planning Policy Framework (NPPF), which seeks to establish economic growth as the primary objective of the planning system.¹ We are concerned that the reorientation of the planning system towards short-term measures to drive economic growth will lead to decisions which cause significant problems in the long term, and that the ability of the planning system to deliver multiple benefits in an integrated way will be lost.

¹ DCLG (2011) *Draft National Planning Policy Framework*,
<http://www.communities.gov.uk/publications/planningandbuilding/drafftframework>.

In a recent debate on the NPPF, the Minister for Decentralisation and Cities, Greg Clark MP, stated that “*thinking on sustainability has progressed*” since the 2005 Sustainable Development Strategy and that “*one should be looking for positive improvements to the environment, not simply to trade off*” the separate pillars of sustainable development.² We support the Government’s commitment to a more integrated approach to achieving sustainable development. However, we believe that the five guiding principles from the 2005 Sustainable Development Strategy (2005 Strategy) still provide a widely-supported framework for sustainable development.³

We acknowledge the hesitation to provide a detailed definition of sustainable development in primary legislation and the argument that it might not be possible to provide an all-encompassing definition. However, we feel that the five principles from the 2005 Strategy should fundamentally underpin sustainable development, and that they should provide the basis for a definition used in the planning system.

If a statutory definition cannot be agreed, the at the very least the Localism Bill should require any guidance issued under Section 39 of the Planning and Compulsory Purchase Act – which would include the NPPF – to include a definition of sustainable development according to the five guiding principles from the 2005 Strategy. This would be in line with the recommendation made by the Environmental Audit Committee following its inquiry into sustainable development in the Localism Bill.⁴ This approach would allow the interpretation of sustainable development in the planning context to evolve over time, in policy and guidance, in response to changing circumstances and conditions such as new developments, inventions and technological advances.

A definition of sustainable development, based on sound principles, would not impose inflexible boundaries on local communities or developers. By setting minimum standards, such a definition would help to provide greater certainty and consistency in decision-making and planning at local level, which are essential drivers for economic development and innovation. It would be a flexible policy driver that guides decision makers to more comprehensively consider the impacts of their policies and initiatives. It is often said that sustainable development means different things to different people, but it is not the definition of sustainable development that changes. Rather, local circumstances may require different approaches to be taken to achieve it; a statutory definition can still be interpreted by individual local authorities in a manner that responds to changes in their locality and in circumstances.

Embedding sustainable development at the core the planning system will not harm the long-term economic development or competitiveness of the country. Economic development that fails to respect environmental limits is self-defeating because it will eventually erode the ecosystem services upon which our economy and society rely, thereby hindering the continuing prosperity and competitiveness of this country. Those countries with a strong and competitive economy, such a Germany, tend to have stricter planning rules.

Providing a robust definition of sustainable development will not necessarily create increased amounts of litigation to promote or prevent development. A robust definition of sustainable development, based on sound principles, would provide greater clarity in decision-making, rather than greater ambiguity. To successfully embed the five principles of sustainable development at the heart of the planning system, through both plan-making and decision-taking,

² House of Commons National Planning Policy Framework debate, 20 October 2011, column 1085,

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm111020/debidx/111020-x.htm>.

³ In the 2005, the UK government and the devolved administrations for Northern Ireland, Scotland and Wales have agreed a common framework for sustainable development, called “Securing the Future”. This framework set the twin goals of living within environmental limits and providing a just society, by means of good governance, sound science and a sustainable economy.

⁴ House of Commons Environmental Audit Committee (2011) *Sustainable Development in the Localism Bill*,

<http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/sustainable-development-in-the-localism-bill/>.

the NPPF (like PPS1 before it⁵) must have a key role in expanding the definition, advising what the principles mean in the planning system and setting out key objectives and policies to help local authorities plan for and deliver sustainable development.

Clause 142: local finance considerations

The Government amended clause 142 at report stage with the aim of alleviating concerns that financial considerations were being elevated above other considerations.⁶ We welcome the clarification that local finance considerations are not to be given any greater weight in the determination of planning applications. However, we remain concerned that the clause goes beyond existing case law by allowing local finance considerations to influence planning decisions without requiring these considerations to relate to the 'use and development of land', as is the case in existing case law (*Stringer v Minister of Housing* [1971]).

In the Report Stage debate on the Government amendment to clause 142, Earl Attlee sought to clarify the application of the clause:

*“What this means in practice is that regard should be had where and only where the case law tests on materiality are satisfied; that is where the local finance considerations in question relates to the use and development of land and relates to the planning merits of the development in question”.*⁷

Although the clause refers to local finance being a consideration 'so far as material to the application' the legislation does not clarify that such a consideration would only be material when it relates to the 'use and development of the land'. By failing to make this clarification, s142(2)(b) can be read as meaning something far wider than the Government's stated intentions. Clause 142 opens the door to planning decisions being heavily influenced by financial payments to local authorities that would not currently be considered a material consideration. For example, this could mean that an incentive payment to a local authority – funds that were unrelated to the proposed development – could become the deciding factor in permitting an otherwise unacceptable development. To a local community, this will suggest that planning permission is for sale to the highest bidder.

The Greenest Planning Ever coalition continues to recommend the removal of clause 142 in its entirety. As an absolute minimum, the Government must clarify within the clause that local financial considerations must 'relate to the use and development of land'. Anything less will both undermine public faith in the planning system, and interact with the presumption in favour of sustainable development in the NPPF to further lower the bar to damaging development.

5 OPDM (2005) *Planning Policy Statement 1: Delivering Sustainable Development*,
<http://www.communities.gov.uk/publications/planningandbuilding/planningpolicystatement1>.

6 Amendment 223CA tabled by Earl Attlee.

7 House of Lords Report Stage, 17 October 2011, column 124,
<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/111017-0003.htm>.

Notes

This briefing is supported by the following 13 members of the Greenest Ever Planning coalition:

- Amphibian and Reptile Conservation
- Bat Conservation Trust
- Butterfly Conservation
- Campaign for Better Transport
- Campaign for National Parks
- Campaign to Protect Rural England
- Friends of the Earth England
- National Trust
- Open Spaces Society
- Royal Society for the Protection of Birds
- The Wildlife Trusts
- Woodland Trust
- WWF-UK

For more information, please contact Kate Hand, kate@wcl.org.uk or on 020 7820 8600.

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ⁱ The Greenest Planning Ever coalition is a campaign of Wildlife and Countryside Link and partners, and has come together to ensure that the natural environment is at the heart of planning reform. Wildlife and Countryside Link is a coalition of the UK's major environmental organisations working together for the conservation and protection of wildlife and the countryside. <http://www.wcl.org.uk/planningreform.asp>.