HOUSE OF COMMONS LIBRARY

BRIEFING PAPER

Number 07641, 28 September 2016

Neighbourhood Planning Bill [Bill 61 of 2016-17]

By Louise Smith

Contents:

Contents

Contributing authors: Helen Finlayson

Summary

The Neighbourhood Planning Bill 2016-17 (Bill 61), was published and had its First Reading on 7 September 2016. The Bill's Second Reading is scheduled for 10 October 2016.

The text of the Bill and the explanatory notes are available from the Neighbourhood Planning Bill pages on the Parliament website. A table setting out the territorial extent and application of each clause is given at page 16 of the explanatory notes.

The Government's two "key aims" of the Bill are to:

- help identify and free up more land to build homes on to give communities as much certainty as possible about where and when development will take place; and
- speed up the delivery of new homes, in particular by reducing the time it takes to get from planning permission being granted to building work happening on site and new homes being delivered.

The Bill was first announced in the May 2016 Queen's Speech as what was initially called a "Neighbourhood Planning and Infrastructure Bill". The Background Briefing notes to the Queen's Speech indicated that it would include provisions to put the National Infrastructure Commission on a statutory footing and to enable the privatisation of Land Registry. These two provisions have not been included in the Bill. The Government has indicated that following the July 2016 cabinet reshuffle, the new Ministers would like to consider further these proposals.

On **neighbourhood planning** the Bill introduces a new procedure to allow neighbourhood plans to be modified. It also deals with the situation of where a new neighbourhood plan is needed, but covering a slightly different geographical area to the previous one. This part of the Bill is also the subject of an open consultation, Implementation of neighbourhood planning provisions in the Neighbourhood Planning Bill.

The Bill provides that **pre-commencement planning conditions** can only be used by local planning authorities where they have the written agreement of the developer. If the developer does not agree to the pre-commencement condition then the local authority has the option to refuse the planning permission. These provisions are also the subject of a Government Open consultation: Improving the use of planning conditions.

Measures are also included in relation to **compulsory purchase powers**. It introduces powers allowing the temporary possession of land and a duty to provide compensation for it. It aims to clarify case law on the definition of what is meant by a "no-scheme world" for the assessment of compensation. A time limit is set in the Bill for an acquiring authority to issue a compulsory purchase confirmation notice. The Bill also provides for Transport for London and the Greater London Authority to be able to acquire land through compulsory purchase on behalf of each other for mixed-use transport, housing and regeneration purposes. Consultation on these provisions concluded earlier in the year.

While the Bill has been broadly welcomed by planning professionals, lawyers and the building industry, some commentators have called it "uninspiring" and have questioned whether it will meaningfully increase the supply of homes. The provisions on pre-commencement planning conditions have so far attracted the most comment, including concern about reduced environmental and archaeological protections, which the Government has sought to allay.

1. Background

The Government's two "key aims" of the Neighbourhood Planning Bill 2016-17 (Bill 61) are to:

- Help identify and free up more land to build homes on to give communities as much certainty as possible about where and when development will take place; and
- To speed up the delivery of new homes, in particular by reducing the time it takes to get from planning permission being granted to building work happening on site and new homes being delivered.[1]

The Bill also sits alongside the Government's ambition of building one million homes by 2020.[2]

The Bill was first announced in the Queen's Speech on 18 May 2016 as what was initially called a "Neighbourhood Planning and Infrastructure Bill". The Background Briefing notes to the Queen's Speech indicated that the Bill would include provisions to "strengthen" neighbourhood planning, to streamline the use of planning conditions and to make the compulsory purchase order process "clearer, fairer and faster for all those involved". The notes also indicated that there would be provision in the Bill to put the National Infrastructure Commission on a statutory footing and to enable the privatisation of Land Registry. These last two elements are not contained in what is now called the Neighbourhood Planning Bill.

The Bill was had its First Reading on 7 September 2016. The Bill's Second Reading is scheduled for 10 October 2016.

The text of the Bill and the Explanatory Notes are available from the Neighbourhood Planning Bill pages on the Parliament website.

A number of Government documents and consultation papers were published alongside the Bill. These are:

- Press release: New Bill will boost growth and housebuilding
- European Convention on Human Rights memorandum
- Delegated Powers memorandum
- Open consultation: Implementation of neighbourhood planning provisions in the Neighbourhood Planning Bill
- Open consultation: Improving the use of planning conditions: A consultation on measures in the Neighbourhood Planning Bill.
- Consultation outcome: Further reform of the compulsory purchase system.
- Compulsory purchase letter: important information for property investors

---

1 Neighbourhood Planning Bill Explanatory Notes, Bill 61-EN, para 1
2 HM Government, Prime Minister: Councils must deliver local plans for new homes by 2017, 12 October 2015

1.1 Territorial extent

A table setting out the territorial extent and application of each clause is given at page 16 of the Explanatory Notes. The extent refers to the legal jurisdiction and the application refers to the country where the provisions will have practical effect. The territorial extent is also summarised in the explanatory notes as follows:

- Parts 1: Neighbourhood Planning, Planning Conditions, and Planning Register - these provisions extend to England and Wales, but apply to England only.
- Part 2: Compulsory Purchase - these provisions extend and apply to England and Wales with the exception of clause 23(3) which extends to Great Britain and applies to England and Wales , and clauses 26 and 27 which extend to England and Wales but apply to England only.
- Part 3: Final Provisions - these clauses extend and apply to the UK.

English votes for English Laws

On 22 October 2015, the House of Commons agreed to changes to its Standing Orders to allow members from England or England and Wales to give their consent to Government legislation that affected only England, or England and Wales and that was within devolved legislative competence (English votes for English laws – EVEL).

Under the procedures, the Speaker is required to certify provisions in Government Bills that affect either England-only or England and Wales-only and are within devolved legislative competence.

On 14 September the Speaker of the House of Commons certified, for the purposes of Standing Order No. 83J, and on the basis of material put before him, that, in his opinion:

> Clauses 1 to 8, 26 and 27 of and Schedules 1 and 2 to the Neighbourhood Planning Bill (Bill 61) relate exclusively to England and are within devolved legislative competence, as defined in Standing Order No. 83J, and Clauses 9 to 25 and 28 to 30 relate exclusively to England and Wales and are within devolved legislative competence, as defined in Standing Order No. 83J.[3]

1.2 House building statistics

The Government has a stated ambition of building one million homes over the course of this Parliament to 2020.[4]

This ambition reflects housing projections up to 2037 (published in February 2015) which indicated that over the period from 2012 to 2022, annual average household growth is projected at 220,000 homes per year.[5] This figure exceeds the number of homes added to the

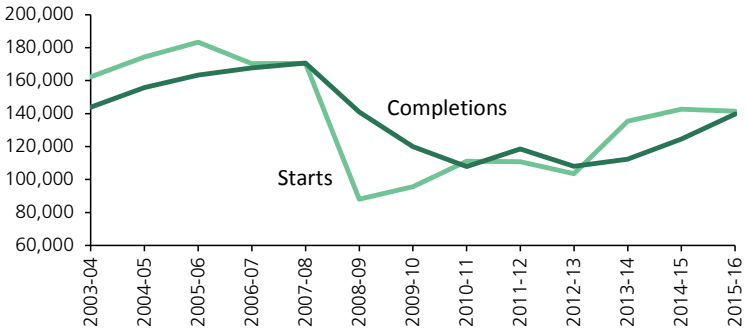
---

3 House of Commons, Votes and Proceedings, 14 September 2016, p9
4 HM Government, Prime Minister: Councils must deliver local plans for new homes by 2017, 12 October 2015
5 National Statistics, 2012-based Household Projections: England, 2012-2037, 27 February 2015

dwelling stock in recent years. According to the August 2016 Government Housing Statistical Release 139,030 homes were completed in the year to June 2016, which is 6 per cent higher than in the year to June 2015.[6]

There were 144,280 homes started in the year to June 2016, a 2 per cent increase from the year to June 2015. The graph below from the Government's August 2016 Housing Statistical Release shows the trends in starts and completions in England from 2003-04 to date:

Trends in starts and completions, England, 12 month rolling totals



Department for Communities and Local Government, *Live tables on house building*, Tables 208 and 209

For further statistics on the housing market are available in the Library's Economic Indicators, F3: Housing Market, 13 September 2016 and from the briefing paper, Sources of Statistics: Housing, 13 July 2016.

1.3 Overall reaction to the Bill

The Royal Town Planning Institute welcomed the Bill, including its:

> …measures to simplify and speed up neighbourhood planning, the substantive package on compulsory purchase orders, simplified but effective pre-commencement conditions, and requirement to capture data on permitted development approvals.[7]

The chief executive of the British Property Federation was positive about the Bill's contribution to the industry:

> "Our industry is an important cornerstone of the economy, creating jobs, attracting investment, and delivering the homes and workplaces that are crucial to our everyday lives. The provisions laid out in the bill should go some way towards helping our industry continue to deliver these things, and we are pleased that it is now getting under way."[8]

The chairman of the National Association of Local Councils (NALC) welcomed the measures in the Bill, but said that there were still a

---

6 Department for Communities and Local Government, House Building: June Quarter 2016, England, 25 August 2016, p4
7 RTPI, RTPI welcomes Neighbourhood Planning Bill, 7 September 2016
8 BPF, Swift introduction of Neighbourhood Planning Bill welcomed by property industry, 7 September 2016

number of areas in which the proposals could be strengthened to "give communities more rights within the planning process, improve financial benefits from development and strengthen local democracy."[9]

Professional services and investment management firm JLL called the provisions in the Bill "a good start":

> While today's introduction of the new Neighbourhood Planning Bill is a positive one, it is vital that the Government focusses on long-term supply chain solutions.
>
> "Successive Governments have played politics with demand-side housing solutions, but have avoided the very real structural challenges of an industry that does not have enough workers and struggles to innovate.
>
> "Today's announcement is a good start, but the bigger agenda of directly supporting new supply across a range of tenures, including private and social renting, must form part the new Government's housing agenda."[10]

The House Builders Association (HBA) said that overall the Bill was "unlikely to meaningfully increase the supply of homes or appropriately empower local people." It expressed specific concern that new duties imposed on local authorities would slow down the planning process.[11] A similar concern was raised by a partner at law firm Howes Percival, who said:

> Overall, the provisions in the Bill appear to us to be uninspiring and unlikely to make any fundamental contribution to the Government's commitment to deliver one million new homes in this Parliament. This is a particularly disappointing opportunity missed, particularly following the economic uncertainty caused by the Brexit referendum. It might have been more helpful for secondary legislation to support the Housing and Planning Act 2016 to be introduced first – that seems to us at this stage to be a more important priority. The absence of any specific provisions on infrastructure may indicate that further legislation is planned but will be the focus of a separate Bill. The delivery of infrastructure to help deliver growth must remain a key objective of Government.[12]

1.4 Provisions from the Queen's Speech not in the Bill

National Infrastructure Commission: statutory footing

A National Infrastructure Commission (NIC) was set up by the former Chancellor of the Exchequer, George Osborne, as an independent body on 5 October 2015.[13] A core part of its role is to look at the UK's future needs for nationally significant infrastructure projects over the next 10 to 30 years.[14] In January 2016 HM Treasury published National

---

9 "Reaction: Neighbourhood Planning Bill" Planning, 7 September 2016
10 JLL, JLL Responds To New Neighbourhood Planning Bill, 8 September 2016
11 National Federation of Builders, HBA: Neighbourhood planning without infrastructure means fewer homes, 8 September 2016
12 Howes Percival, Breaking News: Neighbourhood Planning Bill published by Government, 12 September 2016
13 "Chancellor announces major plan to get Britain building" gov.uk 5 October 2015
14 National Infrastructure Commission, About us [on 15 February 2016]

Infrastructure Commission: consultation which sought views on how the NIC should operate in advance of legislation being laid to underpin its functions and remit. This was followed by the Government's May 2016, National Infrastructure Commission: response to the consultation.

The removal of the NIC from the Bill appears to have been a surprise to many in infrastructure industry. Director of policy and external affairs at the Association for Consultancy and Engineering Julian Francis called it "a startling omission".[15] Richard Threlfall, UK head of infrastructure at KPMG, said he was "dismayed" at the "complete u-turn that has taken the industry by surprise".[16]

Following the absence of provision for it in the Bill, the NIC has asked Ministers to clarify how its independence and powers will now be guaranteed in the future.[17] A Lords written question tabled by Lord Sharkey in September 2016 asked the Government whether it still intended to put the National Infrastructure Commission on a statutory basis. The Government gave no commitment on legislation:

> **Answered by: Lord O'Neill of Gatley**: To allow the Neighbourhood Planning Bill to focus on essential planning measures, legislation for the National Infrastructure Commission has not be included at this time.
>
> The Commission is an important part of the government's overall approach on infrastructure and has already made a significant impact through its first three reports.
>
> We remain fully committed to the Commission which has a crucial role to play in setting out the country's infrastructure priorities. We are considering how it can best support the government's new industrial strategy.[18]

Land Registry privatisation

The Government's background briefing paper to the Queen's Speech 2016 sets out the changes expected to be made by the Bill to the Land Registry:

> The new legislation would enable the privatisation of Land Registry, which would support the delivery of a modern, digitally-based land registration service that will benefit the Land Registry's customers, such as people buying or selling their home.
>
> It could also return a capital receipt to the Exchequer to help reduce national debt.

An article from Inside Housing reported that the proposals to privatise the Land Registry had been "met with forceful opposition by campaigners and the housing sector, who raised concerns about the plans worsening the service or pushing up costs."[19] It also quoted an official from the Department for Business, Energy and Industrial Strategy

---

15 "Why was National Infrastructure Commission dropped from key planning bill?" Infrastructure Intelligence, 9 September 2016

16 "Government shelves independence plan for infrastructure body", *Financial Times*, 9 September 2016

17 "Infrastructure body urges clarity on its powers" Planning Portal, 15 September 2016

18 PQ HL1926 [on the National Infrastructure Commission] 19 September 2016

19 "Land Registry privatisation plan on hold", *Inside Housing*, 7 September 2016

who said: "No decision has been taken on the future of the Land Registry" and that:

> A consultation on the Land Registry's future closed in May and we are carefully considering our response. It is only right that new ministers take time to look at all their options before making a decision.[20]

For further information about proposals to privatise the Land Registry, see Library Briefing Paper, Land Registry Privatisation, 20 September 2016.

1.5 Previous planning legislation

This Bill is the latest in a series of legislation introduced, in part, to reform the planning system (for the most part in England) by the former coalition and the current Conservative Governments. This legislation includes:

- The Localism Act 2011;
- The Enterprise and Regulatory Reform Act 2013;
- The Growth and Infrastructure Act 2013;
- The Infrastructure Act 2015; and
- The Housing and Planning Act 2016

Library briefing papers on this legislation prepared for the second reading of the then Bills is available from the Research Briefings page of the Parliament website.

The coalition Government also introduced new planning policy following the introduction of the National Planning Policy Framework in March 2012 and the subsequent March 2014 online national Planning Practice Guidance.

[20] "Land Registry privatisation plan on hold", *Inside Housing*, 7 September 2016

2. Neighbourhood planning

The neighbourhood planning regime as it currently exists was first introduced in England by the Localism Act 2011. It allows parish councils and groups of people from the community, called neighbourhood forums, to formulate neighbourhood development plans and orders, which can guide and shape development in a particular area. The draft plans and orders must pass an independent examination. If they pass they must then be put to a local referendum. If the majority of those who vote are in favour the local planning authority must adopt the plan, subject to its legal compatibility.

A neighbourhood plan is given the same legal status as a local plan once it has been agreed at a referendum and is "made" (brought into legal force), by the local planning authority. At this point it becomes part of the statutory development plan. Applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.[21]

According to the Government, under these provisions there have been over 200 neighbourhood planning referendums, all of which have been successful, with an average "yes" vote of 89 percent.[22] For further information see Library briefing paper, Neighbourhood Planning, 4 July 2016.

The Neighbourhood Planner website provides information about neighbourhood planning activity throughout England and gives an indication of which stages different neighbourhood plans and applications for designations are at. The Department for Communities and Local Government has produced an interactive map showing where neighbourhood planning and other community right uses are taking place across the country.

A number of changes to the neighbourhood planning system were made as part of the Housing and Planning Act 2016. In particular:

- to give the Secretary of State powers to set certain time limits for parts of the process of making a neighbourhood development plan or order; and
- to allow the Secretary of State to intervene in the process if local authorities are not using their neighbourhood planning powers within these prescribed limits.

The secondary legislation related to these provisions is expected to come into force on 1 October 2016.[23]

---

21 Section 38(6) of the Planning and Compulsory Purchase Act 2004

22 HM Government, Open consultation: Implementation of neighbourhood planning provisions in the Neighbourhood Planning Bill, 7 September 2016, para1

23 The Neighbourhood Planning (General) and Development Management Procedure (Amendment) Regulations 2016 (SI 873)

The Government's background briefing paper to the Queen's Speech 2016 announced that this Bill would make the following changes to the neighbourhood planning system:

- To further strengthen neighbourhood planning and give even more power to local people.
- The new legislation would also strengthen neighbourhood planning by making the local government duty to support groups more transparent and by improving the process for reviewing and updating plans.

At the same time that the Bill was published, the Government published an Open consultation: Implementation of neighbourhood planning provisions in the Neighbourhood Planning Bill (hereafter the NP consultation). The NP consultation closes at midnight on 19 October 2016. It seeks views on the Bill's provisions for secondary legislation in relation to the following areas:

- The detailed procedures for modifying neighbourhood plans and Orders
- The examination of a neighbourhood plan proposal where a neighbourhood area has been modified and a neighbourhood plan has already been made in relation to that area
- A requirement for local planning authorities to review their Statements of Community Involvement at regular intervals

2.1 The Bill (clauses 1-6)

Clauses 1-6 of the Bill on neighbourhood planning extend to England and Wales, but apply to England only.

Duty to have regard to post-examination neighbourhood development plan

Clause 1 would allow a neighbourhood plan to carry formal weight in the planning process at an earlier stage. While at present the Government's planning practice guidance directs that an emerging neighbourhood plan *may* be given weight in determining a planning application,[24] this clause *would require* the decision-taker to give a neighbourhood plan weight at its post-examination stage. This means that a neighbourhood plan will be required to be given weight in the planning process before it is put to a neighbourhood referendum.

Modification of neighbourhood development plan or order

Clause 3 of the Bill introduces new modification processes for where neighbourhood plans need to be updated. These are summarised in the Government's NP consultation as follows:

- A local planning authority, with the agreement of the relevant qualifying body, would be able to make minor modifications to a neighbourhood plan or Order at any

[24] HM Government National Planning Practice Guidance, What weight can be attached to an emerging neighbourhood plan when determining planning applications? (Paragraph 007, Reference ID: 41-007-20140306

time without the need for public consultation, examination or referendum (in the same way that the authority can currently correct errors). Minor modifications are those that do not materially affect any planning permission granted by a neighbourhood development order or the policies in a neighbourhood plan.

- More significant modifications to a neighbourhood plan that are not so significant or substantial as to change the nature of the plan may be made through a streamlined procedure. There would be a stronger expectation that the independent examination will be 'paper based', with hearings only in exceptional circumstances. There would be no referendum, with the examiner's recommendations being binding in most cases. The local planning authority will decide if proposed modifications are appropriate for this process and the examiner will confirm this.

9. Where proposed modifications would change the nature of the plan, the existing process for making a new neighbourhood plan would still be required.[25]

The Bill inserts a new schedule (schedule 1 to this Bill) into the *Planning and Compulsory Purchase Act 2004* to put into legislation the process that must be followed for modifications to a plan that are material but are not so significant or substantial that they change the nature of the plan.[26]

The Government's NP consultation explains that the new modification process deliberately replicates closely the existing procedures for making a new neighbourhood plan (to the point that the plan has completed examination). This is to ensure that, in cases where the proposed modifications are too significant or substantial for the streamlined procedure, the plan can be examined as a new plan without having to repeat the consultation that has already been undertaken for the modification.[27]

Changes to neighbourhood areas

As part of the process of making a neighbourhood plan the local planning authority must designate the "neighbourhood area" that the plan policies will cover. This area will often be the whole of a parish or a group of parishes that have agreed to co-operate, or an area that follows existing electoral wards or other established boundaries. No more than one neighbourhood plan can be made for each area.

As circumstances change and boundaries are redrawn it has been found to be difficult to use the existing legislation to amend a neighbourhood area. It may not be possible to make a new neighbourhood plan for an amended neighbourhood area without first revoking the whole of the existing plan. This can leave the community without a plan, until a new plan is prepared and in force.[28]

---

25 HM Government, Open consultation: Implementation of neighbourhood planning provisions in the Neighbourhood Planning Bill, 7 September 2016, paras 8 and 9
26 Ibid, para 9
27 Ibid, para 14
28 Ibid, para 18

Clause 4 allows for an existing neighbourhood plan to remain in force, even where the boundaries of the neighbourhood area for which it was made are amended or a new neighbourhood area is created. According to the Government's NP consultation, the existing plan would continue to guide planning applications while a new plan for the new or modified neighbourhood area is being prepared. When that new plan is made, it would replace the existing plan – but only in relation to the new neighbourhood area. The existing plan would continue to be in force outside the new or modified neighbourhood area.[29]

The NP consultation also sets out the Government's intention to prescribe in regulations an additional "basic condition" for the proposed plan. This would require an examiner to consider whether the plan would have any adverse consequences on an existing plan and, if so, what measures would mitigate the effects. The Government expects any significant environmental effects of the new plan to continue to be assessed as part of the strategic environmental assessment process.[30]

Statement of Community Involvement

Under section 18 of the Planning and Compulsory Purchase Act 2004, local planning authorities are required to produce a Statement of Community Involvement (SCI). The purpose of an SCI is to set out how members of the public can engage with the production of planning policy and in the determination of planning applications. The Government has found that not all SCIs are up-to-date, with around a quarter them last updated before 2012.[31] This means that the SCIs may not reflect the Government's policies introduced in the March 2012 National Planning Policy Framework or the requirements set out in the Localism Act 2011 relating to neighbourhood planning powers.

Clause 6 of the Bill introduces a power for the Secretary of State to make provision in regulations requiring local planning authorities to review their SCIs at such times as may be prescribed. The NP consultation proposes requirements for a review at least every five years, to reflect the expectation that local plans are reviewed every five years. Regulations could also require policies for involving interested parties in the preliminary stages of plan-making to be set out in the SCI.[32]

Clause 5 sets a new requirement for local planning authorities to publish their policies for giving advice or assistance to groups preparing or updating neighbourhood plans in their SCIs.

The Government's NP consultation proposes that regulations will set an initial deadline of 12 months following Royal Assent of the Bill for local authorities to comply with these new requirements.[33]

---

29 HM Government, Open consultation: Implementation of neighbourhood planning provisions in the Neighbourhood Planning Bill, 7 September 2016, para 18
30 Ibid, para 22
31 Ibid, para 24
32 Ibid, para 24
33 Ibid, para 26

2.2 Comment

In relation to clause 1 on giving weight to a neighbourhood plan at an earlier stage, an article from the law firm Pinsent Masons said that it will provide "greater certainty" for local planning authorities and developers in the determination process and "should avoid appeal challenges where the status of the neighbourhood plan at the time of determination has previously been unclear".[34]

Other law firms have also welcomed this provision, although there is some scepticism about the amount of difference it will make in practice:

> "I think the change emphasises the importance of neighbourhood plans to the government," said Richard Harwood QC, barrister at 39 Essex Chambers. "I would be surprised if this led to a different outcome in any planning application, but if plans are specifically identified as something to be considered, there will be less excuse for not doing so."
>
> Chris Bowden, director at consultancy Navigus, welcomed the move. "A lot of neighbourhood plans have been given no weight until they are adopted. That is not consistent with the position on development plan documents," he said. "This will send a clear message that authorities will have to give them that much more weight."[35]

In relation to the provisions on the Statement of Community Involvement Neil Homer, planning director at consultancy rCOH, warned that the measure would not necessarily encourage councils to offer any more support to local groups than they do at present.[36]

The Woodland Trust welcomed the provisions, but highlighted a potential lack of funding to accompany the new local authority duties:

> The Bill also makes the duty for Local Planning Authorities (LPAs) to support neighbourhood planning clearer. This is all good news and is to be welcomed in principle. However it must be remembered that these changes will place further pressure on Local Planning Authorities (LPAs) at a time when their resources are being increasingly stretched. Whilst the Bill may set out more clearly the duties on LPAs with regard to neighbourhood planning there is no accompanying financial package to help them do it. As such there is a risk that the Bill could raises communities' expectations without enabling LPAs to meet them, causing frustration and disillusionment on both sides.[37]

A partner at Law firm Barton Willmore welcomed the Government's intentions to introduce an improved neighbourhood planning process, but cautioned that some neighbourhood plans seek to stall, rather than promote development:

> Dan Mitchell, partner at Barton Willmore in Manchester, said: "We welcome the Government's intention to introduce an improved Neighbourhood Planning process that can ultimately

---

34 Pinsent Masons, The Neighbourhood Planning Bill 2016, 13 September 2016

35 "How bill would make the neighbourhood plan process stronger" *Planning*, 16 September 2016 [subscription required]

36 "How bill would make the neighbourhood plan process stronger" *Planning*, 16 September 2016 [subscription required]

37 The Woodland Trust, The Neighbourhood Planning (and No Infrastructure) Bill, 20 September 2016

> lead to land being released for development. There are some good examples of where Neighbourhood Plans have helped deliver much needed sites for business and new homes. However, there are also far too many examples of where Neighbourhood Plans have been advanced as a mechanism by communities to seek to stall other development proposals from coming forward, or used negatively to seek to limit development in one particular area. There needs to be a rigorous process of scrutiny to ensure that a NP aligns with the overall development strategy in a district and that it will make a positive contribution to providing land for housing.[38]

[38] "MPs to debate streamlined planning measures" *North West Place*, 8 September 2016

3. Planning conditions

Pre-commencement planning conditions are conditions attached to planning permission which must be "discharged" before work can commence on site. Section 70(1)(a) of the Town and Country Planning Act 1990 enables local planning authorities to impose "such conditions as they think fit". This power must be interpreted in the light of material factors, including the National Planning Policy Framework (NPPF), the National Planning Practice Guidance, and relevant case law.

The National Planning Practice Guidance states that:

> When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development.[39]

Paragraph 206 of the NPPF sets "six policy tests", that planning conditions should only be imposed where they are:

1. necessary;
2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.

Planning conditions can be removed or changed by an application made to the local planning authority under section 73 of the *Town and Country Planning Act 1990*. A new deemed discharge for certain planning conditions was introduced in April 2015. This means that where a local planning authority has delayed making a decision on an application on approving a discharge of the planning condition, an applicant can treat approval for discharge as given.

Proposals for change

In the 2016 Budget, the Government announced its intention to streamline the use of planning conditions in England:

> **2.290 Streamlining the use of planning conditions** – To minimise delays caused by the use of planning conditions the government intends to:
>
> - legislate to ensure that pre-commencement planning conditions can only be used with the agreement of the developer
> - review the process of deemed discharge for conditions, to ensure it is effective and its use maximised[40]

The Government's background briefing paper to the Queen's Speech 2016 set out that then (then titled) *Neighbourhood Planning and*

---

39 DCLG, National Planning Practice Guidance: use of planning conditions, 6 March 2014, para 001 Ref ID 21a-001-20140306

40 HM Government, Budget 2016, 16 March 2016, para 2.290

Infrastructure Bill would tackle the problem of excessive pre-commencement planning conditions stopping or slowing down the construction of homes after they had been granted planning permission. This would be done by ensuring that "pre-commencement planning conditions are only imposed by local planning authorities where they are absolutely necessary".[41]

The Bill (clause 7)

Clause 7 amends the Town and Country Planning Act 1990 to provide that a local authority in England cannot grant planning permission which is subject to pre-commencement conditions, unless it first obtains written agreement from the applicant to the terms of the condition. The clause includes a regulation-making power for the Secretary of State to specify the types of conditions which may be imposed, and the circumstances under which they may be imposed. The Secretary of State must consult before making such regulations. Regulations may only be made if the Secretary of State is satisfied that they are required for the purposes of ensuring that conditions imposed on planning permission in England are necessary, relevant, sufficiently precise and reasonable.

Clause 7 also introduces Schedule 2 which makes consequential amendments to the Town and Country Planning Act 1990 in relation to England. Clause 7 and Schedule 2 extend to England and Wales, but will only have practical effect in England.

The explanatory notes to the Bill state that the provisions will not prevent local planning authorities from imposing conditions which are "necessary to achieve sustainable development". If the applicant refuses to accept the conditions imposed by a local planning authority, the authority can refuse to grant planning permission. In such cases, the applicant would be able to appeal against the refusal. In most cases, the appeal would be considered by a Planning Inspector. A Planning Inspector will re-determine the whole application (not only the decision to impose the conditions). A Planning Inspector has the power to confer planning conditions on any appeal granted.[42] Further details about the appeals process are provided in the Library Briefing paper on planning appeals.

The Government intends that the process of agreeing pre-commencement conditions before a decision is issued should become a "routine part of the dialogue between the applicant and the local planning authority, building on current best practice."[43]

Consultation

Alongside the Bill, on 7 September 2016, the Government published a consultation on improving the use of planning conditions. The consultation, which closes on 2 November 2016, seeks views on:

> how the process of prohibiting the use of pre-commencement conditions without the agreement of the applicant would operate,

41 HM Government, The Queen's Speech 2016, 18 May 2016
42 By sections by sections 77, 79 and 177 of the *Town and Country Planning Act 1990*
43 HM Government, Neighbourhood Planning Bill: Explanatory notes, para 5

> and the potential for a wider application of primary legislation to prohibit conditions in targeted circumstances.[44]

Table 1 in this consultation paper provides a summary of the current list of planning conditions that should not be used on the basis that they would fail to meet one or more of the Government's six policy tests. The consultation seeks views on whether any conditions on this list should be expressly prohibited through legislation. It also seeks views on whether there are other conditions which should be expressly prohibited.[45] Clause 7 of the Bill provides that this could be done through secondary legislation.

3.1 Comment

The Chartered Institute for Archaeologists (CIfA) originally expressed some concern about the proposals in the Bill relating to planning conditions, and their potential impact on the "protection or heritage assets of archaeological significance in the planning system".[46]

A petition was published on the petitions.parliament.uk website about concern for the Bill's impact on archaeology. As at 28 September 2016, the petition had over 18,000 signatures. In its response to the petition, the Government stated that it:

> actively supports the use of planning conditions where necessary to protect the wider social, cultural and environmental benefits that conservation of the historic environment can bring.
>
> […]
>
> The proposed power is to help address the urgent need to tackle the overuse of 'pre-commencement' conditions which prevent development, including new homes, from starting until the local planning authority has approved certain details. The measure will not restrict the ability of local planning authorities to propose conditions that are necessary. In the unlikely event that an applicant refuses to accept a necessary pre-commencement condition proposed by a local planning authority, the authority can refuse planning permission. This will maintain appropriate protections for important matters such as heritage, as well as human health, the natural environment, green spaces, and measures to mitigate the risk of flooding.[47]

Following the Bill's introduction, the CIfA said that it was "cautiously welcoming the Bill, which appears to leave room for archaeology, and wider heritage and environmental protections, to be exempted from new provisions". However, it suggested that the proposed measures represented a shift in the balance of power between local planning authorities and developers, as:

> In effect, if the developer does not expressly agree to conditions, the only available option for the LPA would be to refuse the

---

44 DCLG, Improving the use of planning conditions: public consultation, 7 September 2016

45 HM Government, Improving the use of planning conditions: public consultation, 7 September 2016, para 18

46 Chartered Institute for Archaeologists, Queen's speech announces Neighbourhood Planning and Infrastructure Bill, 19 May 2016

47 HM Government, Stop destruction of British archaeology – Neighbourhood and Infrastructure Bill: Government response [accessed 14 September 2016]

> application. Since there are a variety of disincentives for LPAs to refuse applications, this opens the possibility that LPAs will feel pressured into accepting less mitigation if developers refuse initial conditions. In simple terms, developers might be able to barter down requirements to undertake archaeological assessment prior to commencement.[48]

Responding to the Bill, the Local Government Association emphasised the "vital role" played by planning conditions, and stated that there was:

> little evidence to suggest development is being delayed by planning conditions. [Planning conditions enable] planning permissions to go ahead which would otherwise be refused or delayed while the details are worked out. They can also save developers time and money as they do not need to invest in detailed submissions until the principle of the development is granted.[49]

An article from a partner at law firm Howes Percival, suggested that the threat to the developer of having the whole planning permission for the development refused if they do not agree a pre-commencement condition could lead to later delays in the process:

> Currently, if an appeal is submitted in connection with a condition, the whole permission is potentially in jeopardy on appeal. It would have been helpful if the Bill had made it clear that in such circumstances, the decision-maker can only consider the condition the subject of the appeal. Developers are therefore faced with having to agree to such a pre-commencement condition to "bank" their planning permission, before submitting a section 73 application to vary that condition and potentially also appealing a refusal of this application by the local planning authority. This all causes further delays and cost. Provisions making it clear that the dispute resolution procedure applicable to Section 106 Obligations set out in the Housing and Planning Act 2016 could equally apply to pre-commencement condition disputes would also have been helpful.[50]

An article from Planning magazine highlighted the views of James Bainbridge, head of planning and development at property firm Carter Jonas about the difficulties in having a blanket ban on some conditions:

> Bainbridge warned that the plan to give the secretary of state powers to prohibit certain conditions in defined circumstances could prove "very difficult". "A condition could be very important on a particular site, and on another it could be completely irrelevant," he said. Bainbridge added that, should ministers ban certain types of conditions, it could lead to councils insisting on more detailed applications. He said: "There could be a move towards saying that your planning application should include all those details that would otherwise have been imposed as conditions."[51]

---

48 Chartered Institute for Archaeologists, CIfA initial response to publication of the Neighbourhood Planning Bill, 7 September 2016

49 LGA, LGA responds to the publication of the Neighbourhood Planning Bill, 8 September 2016

50 Howes Percival, Breaking News: Neighbourhood Planning Bill published by Government, 12 September 2016

51 "What plan to limit use of conditions means for applicants and authorities" *Planning*, 15 September 2016 [subscription required]

4. Register of planning applications

Permitted development rights are rights to make certain changes to a building without the need to apply for planning permission. The rights derive from the granting of a general planning permission by Parliament, rather than permissions granted by local planning authorities.[52] For some change of use permitted development rights, prior approval of technical aspects of the development is required from the local planning authority before work can proceed.[53]

Further details are set out in the Library Briefing paper on permitted development rights, 30 March 2016.

Local authorities are already required to keep registers of planning applications under section 69 of the Town and Country Planning Act 1990. This does not currently include information in respect of permitted development rights or prior approval applications.

The Bill (clause 8)

Clause 8 amends section 69 of the Town and Country Planning Act 1990 to extend the scope of the planning register to include information about prior approval applications or notification for permitted development rights in England to be placed on the register. This will allow information on the number of new dwellings created through permitted development rights to be collected. It includes a regulation-making power for the Secretary of State to specify the information which needs to be included. Clause 8 extends to England and Wales, but will only have practical effect in England.

From 6 April 2016 the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016 put the office to residential change of use permitted development right on a permanent footing. It also allowed further business to residential change of use. The explanatory notes to the Bill state that these provisions will:

> enable the collection of information on the number of new homes permitted through permitted development, so that the contribution these measures are making to achieve the ambition of building one million new homes by the end of this Parliament can be more accurately measured.[54]

---

52 The Town and Country Planning (General Permitted Development) Order 2015 (SI 596)

53 The matters requiring prior approval vary depending on the type of development, and are set out in the relevant parts of Schedule 2 to the *Town and Country Planning (General Permitted Development) (England) Order 2015*.

54 HM Government, Neighbourhood Planning Bill: Explanatory notes

5. Compulsory purchase order reform

Compulsory purchase powers are enabling powers conferred on public bodies to allow them to acquire land compulsorily. They are exercised most commonly by local authorities to promote schemes for various purposes, such as large housing and regeneration projects. The powers can also be used for acquiring land for large infrastructure projects, such as new power stations, and train lines. The legislation on compulsory purchase is piecemeal and the rules are built upon in a series of case law. It has long been regarded by practitioners as being complex and in need of consolidation and reform.[55]

The current Government undertook a first wave of compulsory purchase reform in the Housing and Planning Act 2016. These reforms were originally consulted on in the Government's March 2015 Technical consultation on improvements to compulsory purchase processes and the subsequent October 2015 Compulsory purchase process: government response to consultation. The aim of these reforms was to make the compulsory purchase system clearer, fairer (for both acquiring authorities and for those whose interests are compulsorily acquired), and faster. Further information about these changes is available in the Library briefing paper, Housing and Planning Bill 2015-16 Commons Library Briefing Paper on Second Reading.

In the March 2016 Budget the Government announced that it would consult on a second wave of Compulsory Purchase Order reforms with the objective of "making the Compulsory Purchase Order process clearer, fairer and quicker."[56]

The Government's background briefing paper to the Queen's Speech 2016 announced that this Bill would:

> [include] reform of the context within which compensation is negotiated – often a very significant and complex part of finalising a compulsory purchase deal. Our proposals, on which we have already consulted, would consolidate and clarify over 100 years of conflicting statute and case law. We would establish a clear, new statutory framework for agreeing compensation, based on the fundamental principle that compensation should be based on the market value of the land in the absence of the scheme underlying the compulsory purchase.

On 21 March 2016 the Government published a Consultation on further reform of the compulsory purchase system (hereafter the March consultation). Its proposals are summarised in it as follows:

> a) the system will be clearer because the measures will:
>
> > i. set out a clearer way to identify market value when agreeing levels of compensation

---

55 The Law Commission (Law Com No 286). Towards a compulsory purchase code: (1) Compensation. Final report on a reference under section 3(1)(e) of the Law Commissions Act 1965, 2003/04 Cm 6071, December 2003

56 HM Government, 2016 Budget, 16 March 2016, para 2.294

ii. put mayoral development corporations on the same footing as new town and urban development corporations for the purposes of assessing compensation

iii. simplify the process by enabling transport and regeneration bodies to make combined orders

iv. repeal redundant legislation

b) the system will be fairer for those whose interests are compulsorily acquired (claimants) because the measures will:

i. ensure that compensation due to those with an interest in the land arising from minor tenancies is calculated on the same basis as others who are in lawful possession but have no further interest in the land

ii. ensure that those claimants who suffer the greatest inconvenience (ie occupiers) receive the greater share of loss payments

iii. building on Housing and Planning Bill proposals to further encourage prompt payment of advance payments of compensation by setting the penalty interest rate for late payment

iv. ensure that claimants in properties with rateable values higher than the current threshold are not systematically excluded from issuing blight notices in areas of the country with high land values, such as London

c) the system will be fairer for acquiring authorities because:

i. there will be consistent powers for all acquiring authorities to temporarily use land for the purposes of delivering their scheme

d) the system will be faster for all parties because:

i. there will be a new legislative requirement to bring compulsory purchase orders into operation within a certain period[57]

The Government's response to the consultation was published alongside the Bill, on 7 September 2016, Consultation on further reform of the compulsory purchase system: government response. It states that with the exception of one minor proposal, a clear majority of respondents supported each of the proposals.[58] The response confirmed that the following measures would be included in the Neighbourhood Planning Bill:

- to set out a clearer way to identify market value when agreeing levels of compensation, including extending the scheme for certain transport projects
- to put mayoral development corporations on the same footing as new town and urban development corporations for the purposes of assessing compensation
- to reform the 'Bishopsgate' principle
- to repeal section 15(1) of the Land Compensation Act 1961

---

57 HM Government, Consultation on further reform of the compulsory purchase system, 21 March 2016, p5-6

58 The exception relates to the issue of the timing of when the "scheme" should be assumed to be cancelled for the purposes of calculating compensation.

- to repeal Part 4 of the Land Compensation Act 1961
- to allow more authorities to bring forward joint compulsory purchase orders for mixed purposes
- to make provision for temporary possession
- to introduce a new legislative requirement to bring compulsory purchase orders into operation[59]

The following proposals were identified as not needing primary legislation, and so would be introduced in secondary legislation (not yet introduced to date), "at the earliest opportunity":

- reverse loss payment share for landlords and occupiers
- penal interest rates to enforce the making of advanced payments
- statutory blight[60]

The Government's compulsory purchase reform impact assessment on these proposals was published in July 2016.

5.1 Wales: legislative competence

The Government's March 2016 Consultation on further reform of the compulsory purchase system stated that its proposals related to England and Wales.[61] The Explanatory Notes to the Bill state that the clauses on compulsory purchase are not within the competence of the National Assembly for Wales.[62]

There has however been some dispute about the legislative competence of the National Assembly for Wales in relation to compulsory purchase. Whereas town and country planning is a specifically devolved subject under schedule 7 to the Government of Wales Act 2006, compulsory purchase is a "silent" subject. A silent subject is one that is neither explicitly devolved nor reserved in legislation. A research paper from the National Assembly for Wales Research service states that:

> Under the current settlement, "compulsory purchase" is a "silent subject". So, the Assembly could legislate in this area if the Bill also fairly and realistically related to a subject in Schedule 7 of the *Government of Wales Act 2006,* such as Town and country planning or Economic regeneration.[63]

The Housing and Planning Act 2016 made provision to reform compulsory purchase in England and in Wales. The Welsh Government tabled a Supplementary Legislative Consent Memorandum (LCM) on the UK Housing and Planning Bill relating to Compulsory Purchase Provisions in January 2016, stating its view that the provisions in the Bill

---

59 HM Government, Consultation on further reform of the compulsory purchase system: government response, 7 September 2016, para 86
60 HM Government, Consultation on further reform of the compulsory purchase system: government response, 7 September 2016, para 87
61 HM Government, Consultation on further reform of the compulsory purchase system, March 2016, p4
62 Neighbourhood Planning Bill Explanatory Notes, Bill 61-EN, p16
63 National Assembly for Wales Research Service, Legal and Research Briefing The Wales Bill: Reserved Matters and their effect on the Assembly's legislative competence, September 2016, p5

in respect of compulsory purchase fell within the Assembly's own legislative competence. On 15 March 2016 a motion in respect of the Housing and Planning Bill LCM was moved in the National Assembly for Wales. The Assembly voted unanimously against the motion, withholding its legislative consent.[64] Any further dispute about the legislative competence Assembly in relation to this Act would be a matter for the courts to determine.

In schedule 1 to the Wales Bill 2016-17, which is currently in the House of Lords, the "compulsory purchase of land" is specifically listed as a reserved matter. If passed, this would mean that compulsory purchase of land is no longer a silent subject.

There have been some concerns about listing the compulsory purchase of land as a reserved subject. For example, in a submission to the Welsh Affairs Select Committee Huw Williams, a partner at law firm Geldards LLP and a former member of the Welsh Government's Independent Advisory Group on Planning said that reserving compulsory purchase of land would cause:

> unnecessary difficulties across a range of devolved activities which are underpinned by powers of compulsory acquisition of land (or their availability in the background).[65]

On 7 March 2016, the Government of Wales published an alternative draft 'Government and Laws in Wales Bill', together with an explanatory summary. This Bill differs from the Wales Bill and does not include compulsory purchase of land as an explicitly listed reserved matter.

5.2 Law Commission Proposals

Some of the Government's proposals in the March 2016 consultation refer back to work done by the Law Commission. In July 2000, the Compulsory Purchase Policy Review Advisory Group, which had been established by the Department for Environment, Transport and the Regions, reported that the law on compulsory purchase was "an unwieldy and lumbering creature". [66] The group made a number of recommendations for detailed improvements. This lead to a project by the Law Commission called Towards a Compulsory Purchase Code.

In 2003 in its final project report the Law Commission similarly called the law of compulsory purchase "a patchwork of diverse rules, derived from a variety of statutes and cases over more than 100 years, which are neither accessible to those affected, nor readily capable of interpretation save by specialists."[67] It recommended a Compensation

---

64 National Assembly for Wales, Record of Proceedings, 15 March 2016, 8. Supplementary Legislative Consent Motion on the UK Housing and Planning Bill relating to Compulsory Purchase Provisions Et Cetera

65 Submission by Huw Williams to the Welsh Affairs Select Committee of Parliament and the Constitutional and Legal Affairs Committee of the National Assembly for Wales, November 2015

66 The Law Commission Consultation Paper No 165, Towards a compulsory purchase code (1) Compensation, A consultative report, June 2002

67 The Law Commission (Law Com No 286). Towards a compulsory purchase code: (1) Compensation. Final report on a reference under section 3(1)(e) of the Law Commissions Act 1965, 2003/04 Cm 6071, December 2003

Code as a framework for possible future legislation, and changes to compulsory purchase procedure.

The recommendations of the Law Commission have not been fully implemented. The *Planning and Compulsory Purchase Act 2004* aimed to make it easier for local authorities to purchase land compulsorily and removed the need for the Secretary of State to confirm compulsory purchase orders which were unopposed. However, it did not implement all of the changes suggested by the Law Commission. The then Labour Government set out their reasons for this in a Written Ministerial Statement from December 2005:

> Although the Commission's recommendations identify a basic framework for reforming the structure of the law, they do not set out the detailed provisions needed to ensure fairness to those affected, as well as speed and simplicity. The ever-evolving complexity of the statute and case law has shown that these aims cannot always easily be reconciled. As the Law Commission has demonstrated, there are no quick and easy solutions and moving towards a simpler and more readily accessible set of laws would still require substantial further work.
>
> The Government would like to have a single simple compulsory purchase code expressed in modern English. But finding further legislative time for this needs to be balanced against the Government's many other priorities. Given the changes providing immediate and tangible improvements were in the 2004 Act, implementing the Law Commission's proposals is not a practicable proposition for the foreseeable future.
>
> The Government consider it more important to maintain a stable legislative framework providing certainty both for acquiring authorities and for those whose properties may need to be acquired. This should encourage acquiring authorities to exercise their compulsory purchase powers wherever this makes sense in the public interest to further their wider policy objectives.[68]

The Bill and the compulsory purchase provisions in the *Housing and Planning Act 2016* implement some of the Law Commission's recommendations in part (for example in relation to reform of the "no-scheme world" principle), but do not provide the full consolidation and update it recommended.

5.3 The Bill (clauses 9-30)

The Government, local authorities and certain other acquiring authorities all have powers to purchase land by the compulsory purchase mechanism. Compulsory purchase powers exist in many different pieces of legislation. They are often specialised, for example powers to acquire land for the construction of an airport. Compulsory purchase procedure in the UK is covered by the *Acquisition of Land Act 1981*, as amended. This Act then refers to the *Land Compensation Act 1961* for assessment of compensation.

---

68 HC Deb 15 December 2005 c162WS

The Bill seeks to "clarify" the statutory framework for compensation, but is not intended to affect the "fundamental principles" on which it is assessed.[69]

Temporary possession of land

When land is compulsorily purchased for a development scheme, there is sometimes a need to acquire further land on a temporary basis, for example, to store materials and machinery needed for the development. As compulsory purchase orders can only authorise the permanent acquisition of land, the acquiring authority must either:

- obtain a permanent right compulsorily over the land they need (usually providing an assurance letter to the landowner confirming that the land will only be required for a certain period of time); or
- enter into a commercial agreement with the landowner concerned.[70]

The Government is concerned that this can result in the acquiring authority being unable to obtain the land they need at a reasonable cost or that the implementation of the scheme is delayed while negotiations take place. The March 2016 consultation sought views on giving all bodies with compulsory purchase powers the same power to temporarily enter and use land for the purposes of delivering their scheme.

There was strong support for this proposal, although some concern around whether all acquiring authorities would use the powers in the same way and about reinstatement of land after the temporary use had finished. In response, the Government said that it would put safeguards in the legislation to ensure landowners and occupiers are treated fairly and that there is some certainty about how the power can be used. These would include making provision for reinstatement of the land and protecting the status of tenants.[71]

Clauses 9 – 21 of the Bill relate to the temporary possession of land. They all extend to and apply to both England and Wales.

Clause 9 provides those with the powers to acquire land the power to take temporary possession of land for purposes connected with a compulsory purchase scheme or agreement.

Clause 10 sets out the procedure for making the instrument authorising the temporary possession of land.

Clause 11 deals with notice requirements. It requires acquiring authorities to give three months' notice to those with an interest in the land which is subject to the proposed temporary possession and for them to set out the time period for which they will require the land.

---

69 Neighbourhood Planning Bill Explanatory Notes, Bill 61-EN, para 7

70 HM Government, Consultation on further reform of the compulsory purchase system, 21 March 2016, para 67

71 HM Government, Consultation on further reform of the compulsory purchase system: government response, 7 September 2016, para 73

Clause 12 provides that an owner of the temporary possession land may serve a counter-notice on the acquiring authority within 28 days of the above notice being served. This counter-notice can either:

- Limit the temporary possession to 12 months where the land is or is part of a dwelling; or
- Limit the temporary possession to 6 years in any other case.

Under this clause if a counter-notice is served the acquiring authority then has three options:

- To accept the terms of the counter-notice;
- To withdraw their own notice for temporary possession; or
- To purchase the owner's interest in land through the compulsory purchase procedure.

Clause 13 deals with the situation of where someone refuses to give up their interest in the land for temporary possession. It would allow an acquiring authority to issue a warrant to an enforcement officer to gain possession of the land on its behalf.[72]

Clause 14 provides those with an interest in the land taken for temporary possession with a right to compensation. It specifically includes provision for the value for a leasehold interest in the land to be taken into account in calculating compensation and for compensation to be paid relating to disturbance of trade or business. **Clause 15** allows for this compensation to be paid in advance.

Clause 16 provides that if an acquiring authority is required to make an advance payment of compensation but pays some or all of it late, the authority must pay interest on the amount which is paid late. It also provides that the Treasury must, by regulations, specify the rate of interest to be paid on advance payments of compensation which are paid late. These regulations would be made by the negative procedure. The Government's Delegated Powers Memorandum accompanying the Bill provides further information about what is intended here:

> 72. It will be important to set a rate of interest that acts as an effective deterrent to late payment, but is not disproportionate and unfairly damaging to the delivery of development in the public interest. The Government intends to therefore set the rate of interest by reference to the base rate (the consultation paper proposed a rate of 8% above the base rate for late payment of advance payments of compensation for land taken by compulsion). It is likely that the rate will be published every quarter to reflect any changes in the base rate and where there is a significant change it will be necessary to update the Regulations.[73]

Clause 17 allows the acquiring authority to use the temporarily possessed land as though it had acquired all interest in it. This includes the power to remove erect buildings and remove vegetation. The explanatory notes to the Bill state that the power to remove buildings

---

72 Neighbourhood Planning Bill Explanatory Notes, Bill 61-EN, para 49

73 Neighbourhood Planning Bill Delegated Powers Memorandum by the Department for Communities and Local Government, 8 September 2016, para 72

"excludes dwellings where the temporary possession is required for maintenance of the scheme".[74]

Clause 18 makes consequential amendments, including to provide that temporary possession land is included in the list of categories of land which are defined as blighted land. Blight is when the value of a property is reduced because of large scale, or major, public works. It makes it difficult for land and property to be sold at market value. Schedule 13 of the *Town and Country Planning Act 1990* defines when land can be considered to be to be blighted. Those with an interest in land falling under this definition can serve a "blight notice" on an acquiring authority to require it to compulsory purchase the land at full market value.

Clause 19 provides the Secretary of State with the power to make further regulations about the temporary possession of land, subject to the affirmative procedure. The Delegated Powers Memorandum describes further the possible content of these regulations:

> 77. For example, clause 19 (2) provides that the power under clause 19(1) may be used in particular to limit the circumstances in which land may be acquired temporarily, limit the ways land acquired in this way may be used, and limit the types of land which may be subject to such acquisition. Further, Regulations may require an acquiring authority to provide specified information to specified persons relating to compulsory temporary possession, or make provision for a person who has a right to occupy land to be deemed to occupy the land for specified purposes during the temporary possession.
>
> 78. The Government intends to use the Regulations to limit the temporary possession period in certain cases, such as cases where the disruption to business is relatively onerous and temporary possession could not be justified beyond a limited period. It is also likely to be necessary to make provision limiting the way in which an acquiring authority could use land. For example in areas of noise sensitivity the use could be limited to storage of materials.[75]

No timetable for when these regulations will be made has yet been set by the Government.

No-scheme world principle

The general principle of compensation for compulsory purchase is that the claimant (the person who has the interest in the land being acquired) should be no worse or better off in financial terms following the acquisition. Since the principle was first established, case law has sought to clarify the basis upon which the land valuation in these circumstances is calculated, based around the principle of what is known as the "no-scheme world" or the "Pointe-Gourde rule".[76]

The no-scheme world principle provides that compensation cannot include an increase or decrease in value which is entirely due to the

---

74 Neighbourhood Planning Bill Explanatory Notes, Bill 61-EN, para 57

75 Neighbourhood Planning Bill Delegated Powers Memorandum by the Department for Communities and Local Government, 8 September 2016, paras 77-78

76 This stems from the case of Pointe Gourde Quarrying and Transport Co v Sub-Intendent of Crown Lands [1947] AC 565 PC

(development) scheme underlying the acquisition.[77] In other words, the effect on the value of the land caused by the scheme behind the compulsory purchase is to be disregarded. The Law Commission gave the following example of the no-scheme world principle in its consultation paper:

> For example, a railway scheme may cause blight and reduced land values while it is being planned and constructed. Conversely, the prospect of its use once completed will give the land enhanced value to the promoter (as compared to its existing use value), and may also result in higher land values in the area, for example near new stations. The no-scheme rule says that land acquired by the authority for the project should be bought at values which reflect neither the blight nor the enhancement.[78]

Problems with the no-scheme world principle

In case law the no-scheme world principle has been interpreted in a number of complex and sometimes contradictory ways. Two House of Lords' decisions are frequently cited in relation to this principle, both of which emphasised a need for reform:

- Waters v Welsh Development Agency [2004] UKHL 19; and
- Spirerose Ltd v Transport for London [2009] UKHL 44.

The Law Commission report, "Towards a Compulsory Purchase Code" (2003), noted that operating the no-scheme world principle was the most difficult subject it had to address in its project.[79] In its consultation paper, the Law Commission highlighted that although the rule was developed in relation to the disregard of the *increases* in value, it was assumed without discussion that disregard of *decreases* was simply the other side of the same coin. It went on to say that "in neither case is it obvious how far, in policy terms, the rule should extend."[80]

Another problem is in deciding how far the "scheme" should extend. For example, the Law Commission explains that problems can occur where an authority is acquiring land as part of a wider redevelopment scheme, in which it is investing public funds by way of improvements to infrastructure (such as roads and sewers). The no-scheme rule ensures that the wider scheme is disregarded, so that the authority is able to acquire the land for the scheme at values which are not inflated by its own investments:

> 6.9 There are two main problems. First, it becomes necessary to construct a hypothetical "no-scheme world", which may involve a speculative exercise of "rewriting history". Second, the wider the "scheme" is drawn, the more the potential for unfairness between those whose land is acquired and those in the same area who retain their land. Under the modern system of planning control, those whose land is not acquired will see the benefits of

---

77 HM Government, Consultation on further reform of the compulsory purchase system, 21 March 2016, para 8

78 The Law Commission Consultation Paper No 165, Towards a Compulsory Purchase Code: (1) Compensation: A consultative report, June 2002, para 6.4

79 Law Commission, Towards a Compulsory Purchase Code Final Report, 2003, para 7.1

80 The Law Commission Consultation Paper No 165, Towards a Compulsory Purchase Code: (1) Compensation: A consultative report, June 2002, para 6.6

> any local improvements to infrastructure reflected in the enhanced value of their land, without having to pay any special tax or development charge for that enhancement. Should the person whose land is compulsorily acquired be worse off in that respect?[81]

Government proposal for reform of the no-scheme world principle

In its March consultation, the Government said that this lack of clarity causes:

> …significant delays and uncertainty in the determination of compensation as various different interpretations of case law, and how they should be applied in each circumstance, colour negotiations and may require reference to the Upper Tribunal.[82]

As a result, the March consultation sought views on proposals to codify the no-scheme world principle in legislation based on the recommendations of the Law Commission and to introduce, a:

- clearer definition of the project or scheme that should be disregarded in assessing value
- clearer basis for assessing whether the project forms part of a larger 'underlying' scheme that should also be disregarded
- more consistent approach to the date on which the project is assumed to be cancelled
- broadening of the definition of the 'scheme' to allow the identification of specified transport infrastructure projects that are to be disregarded within a defined area, over a defined period of time.[83]

The Government's response to the March consultation welcomed the "strong support" it had received for its proposals. The Government said it would take account of some of the concerns raised about possible manipulation of the definition of the "scheme" by the acquiring authority raised by providing "appropriate safeguards to limit the scope of this power." It confirmed that it would base the drafting on codified legislation in the Bill on the Law Commission's recommendations.[84]

The only difference from the Government's original consultation proposals relates to the issue of the date on which the scheme underlying the acquisition is assumed to be cancelled (i.e. from when the no-scheme world begins), for the purposes of assessment of compensation. In its March consultation the Government asked for views on a choice between two possible stages in the compulsory purchase process for the cancellation to be deemed to have happened on.

---

81 The Law Commission Consultation Paper No 165, Towards a Compulsory Purchase Code: (1) Compensation: A consultative report, June 2002, para 6.9

82 HM Government, Consultation on further reform of the compulsory purchase system, 21 March 2016, para 9

83 HM Government, Consultation on further reform of the compulsory purchase system: government response, 7 September 2016, para 9

84 HM Government, Consultation on further reform of the compulsory purchase system: government response, 7 September 2016, paras 16 and 21

The Government's original preferred option was to assume that the cancellation happened on the "launch date". The launch date is the date that the compulsory purchase order notices are issued. The other option was to assume that the cancellation happened on the "valuation date". The valuation date is the earliest of:

- The date the acquiring authority enters and takes possession of the land where the notice to treat procedure is used, or the date the title of the land vests in the acquiring authority when the general vesting declaration procedure is followed.
- The date values are agreed.
- The date of the Lands Tribunals decision.[85]

For complex compulsory purchase there can be a difference in years between the time of the launch date and the time of the valuation date. Respondents to the consultation expressed concern that the long time between the launch date and the valuation date could lead to significant disputes and speculation over what may or may not have happened in the intervening period. As a result of this the Government changed its mind on its preferred option and set out why in its response to the March consulation:

> We have been persuaded that although in valuation terms a launch date cancellation is appropriate for planning assumptions it would be better to establish the valuation date as the statutory cancellation date because this would reflect what is currently happening in practice. Using the valuation date will have the benefit of avoiding potential disputes, with the associated delays and costs, over what might or might not have happened in the period between the launch date and the valuation date and meet our objectives for a clearer and fairer system.[86]

Clause 22 of the Bill aims to clarify the principles and assumptions for the no-scheme world and amends the *Land Compensation Act 1961* accordingly. This clause extends and applies to England and Wales only. In the clause the no-scheme principle is defined as follows:

> The no-scheme principle is the principle that-
>
> (a) any increase in the value of land caused by the scheme for which the authority acquires the land is to be disregarded, and
>
> (b) any decrease in the value of land caused by that scheme or the prospect of that scheme is to be disregarded.

The clause then provides a number of rules which are to be observed in applying the no-scheme principle. It inserts a new section into the *Land Compensation Act 1961* to define what is meant by a "scheme". Under this definition a regeneration project which is made possible by a relevant transport project can now include the transport project as part of the "scheme" to be disregarded in the assessment of compensation. A letter from the Department for Communities and Local Government

---

85 HM Government, Compulsory Purchase and Compensation: Compensation to Residential Owners and Occupiers, April 2010, para 2.3

86 HM Government, Consultation on further reform of the compulsory purchase system: government response, 7 September 2016, para 21

on 7 September 2016 sets out that the new rules provided for in the Bill will not apply to those who have bought land in the vicinity of a relevant transport project between the time the project was announced and 8 September 2016 (the day after the Bill was printed). This is to "to make sure that those who had invested in land in good faith are not left being under-compensated because the Government has changed the rules in the meantime."[87]

The Government's compulsory purchase reform impact assessment sets out how claimants under this change will receive less compensation than they would otherwise have done:

> Claimants – the proposal to ensure that the public and not private interests benefit from transport infrastructure projects will mean that potential claimants will receive less compensation than they would otherwise have done. Not all claimants will be businesses – approximately two thirds of all current compulsory purchase orders do not include any private businesses as claimants, and a further fifth include at least some non-business tenants.[88]

While new rules will mean that the public does not have to pay for a private increase in land value, it does not appear to address the problem highlighted by the Law Commission that those whose land is not compulsorily purchased and remain may see the value of their land increased to reflect the local improvement in infrastructure.

Repeal of part 4 of the Land Compensation Act 1961

Part 4 of the *Land Compensation Act 1961* provides that in certain circumstances, if land is acquired by compulsory purchase and a more valuable planning permission is granted on it in the future, within 10 years from completion of the compulsory purchase, the claimant is entitled to additional compensation as the original settlement would have been on a false basis. It does not apply to compulsory purchase orders made by the Homes and Communities Agency, urban development corporations, new towns or for certain listed buildings orders.[89]

The Government's view is that although this provision is rarely used, it introduces an element of unknown risk and uncertainty for the acquiring authority in certain compulsory purchase order cases, which in turn can result in increased costs (such as payments of insurance premiums) for acquiring authorities. The Government's proposal therefore is that this provision should be repealed.[90] The Government's response to the March consultation highlighted mixed views on this proposal:

> 56. More than half of the respondents supported the repeal of Part 4 of the Land Compensation Act 1961. Those respondents

---

87 Letter from Department for Communities and Local Government, Compulsory Purchase: important information for property investors, 7 September 2016

88 HM Government, Compulsory Purchase Reform Impact Assessment, 13 July 2016, para 44

89 HM Government, Consultation on further reform of the compulsory purchase system, 21 March 2016, para 57

90 Ibid, paras 58 and 59

> expressed the view that claimants already have the right to get the benefit of planning consents in place at the valuation date, as well as any reasonably foreseeable consent which may be given and therefore there is no need to retain Part 4.
>
> 57. Those who did not support the proposal acknowledged that the provision is seldom used. However, some commented that there are still cases where a more valuable planning permission is granted within 10 years and they considered that this may increase in the future due to the number of infrastructure schemes happening. Others felt that the provision was still useful but was in need of reform to make it easier to use.[91]

Clause 23 of the Bill repeals part 4 of the Land Compensation Act 1961 and related provisions. This clause extends to Great Britain and applies to England and Wales.

Time limit for confirmation notices

Once a compulsory purchase order has been confirmed by the Secretary of State it must then go back to the acquiring authority to be brought into force. A confirmation notice must be served by the acquiring authority on interested persons and published in the local press. The date that notice is published in the press is important because it is the date that the order becomes operative, the start of the six week challenge period and also the start of the three year period within which the compulsory powers must be exercised.[92] There is, however, no statutory requirement for a notice to be published by any specific time. In its March consultation the Government highlighted that some acquiring authorities delay publishing the notice:

> There are some acquiring authorities which, for differing reasons, delay publishing the notice. This could be for financial reasons, because the acquiring authority is continuing negotiations with objectors, or even reconsidering the need for an order. A delay in bringing an order into effect prolongs the uncertainty faced by those with the threat of an order hanging over them and can stagnate development proposals. If the notice of publication is delayed for several months this could increase the risk of a successful challenge to the order should the issues that were relevant in consideration of the order become out-of-date.[93]

In order to reduce delay the Government proposed introducing a statutory period of six weeks from the date of confirmation of an order for an acquiring authority to publish notice of confirmation unless the Secretary of State agreed a different period.[94] The Government's response said that there was "considerable support" for setting a six week target, although did highlight that some people had felt that a six week period would not be long enough.

Clause 24 of the Bill introduces a six week time statutory time limit for issue of the confirmation notices, unless a longer period is agreed in writing between the acquiring authority and the confirming authority (in

---

91 HM Government, Consultation on further reform of the compulsory purchase system: government response, 7 September 2016, paras 56 and 57
92 HM Government, Consultation on further reform of the compulsory purchase system, 21 March 2016, para 78
93 Ibid, para 79
94 Ibid, para 80

practice the Secretary of State). If the acquiring authority fails to do this, it makes provision for the Secretary of State to issue the confirmation notice and recover the costs of doing so.

Compensation for disturbance

Under the current rules business tenants with no interest in the land subject to compulsory purchase are entitled to more generous compensation than short-term tenants[95] and lessees with a break clause in their leases. This is because in assessing compensation entitlement account is taken of the period for which the land occupied by the tenant might reasonably have been expected to be available for the purpose of their trade or business. For short-term tenants and lessees it has been held in case law (and known as the "Bishopsgate Principle"),[96] that the acquiring authority should assume that the landlord terminates the tenant's interest at the first available opportunity following the "notice to treat", whether that would happen in reality or not. A notice to treat is the formal request from an acquiring authority to agree a price for a property. It can only be served once a CPO is confimed.

With the aim of making compensation fair for all claimants the Government proposed to ensure that, in calculating the compensation due to those with an interest in the land arising from minor tenancies, account is taken of the period for which the land occupied by the tenant might reasonably have been expected to be available for the purpose of their trade or business.[97]

The Government's Impact Assessment accompanying the March consultation states that this proposal will mean that affected claimants will benefit from receiving more compensation.[98]

Clause 25 provides that when calculating compensation for disturbance, regard should be had to:

> (a) the likelihood of the continuation or renewal of the tenancy,
>
> (b) in the case of a tenancy to which Part 2 of the Landlord and Tenant Act 1954 (security of tenure for business tenants) applies, the right of the tenant to apply for the grant of a new tenancy,
>
> (c) the total period for which the tenancy may reasonably have been expected to continue, including after any renewal, and
>
> (d) the terms and conditions on which a tenancy may reasonably have been expected to be renewed or continued.

GLA and TfL: joint acquisition of land

Public bodies can only use their compulsory purchase powers in relation to their statutory function. For Transport for London (TfL) this is in relation to transport and highways purposes and for the Greater London Authority (GLA) this is for housing and regeneration purposes. For large

---

95 Defined in the Neighbourhood Planning Bill Explanatory Notes as a tenancy with less than a year left to run, or a tenancy from year to year

96 *Bishopsgate Space Management v London Underground [2004] 2 EGLR 175*

97 HM Government, Consultation on further reform of the compulsory purchase system, 21 March 2016, para 26

98 HM Government, Compulsory Purchase Reform Impact Assessment, 13 July 2016, para 83

projects, this can sometimes mean that two compulsory purchase orders must be promoted; one for the transport elements and one for the regeneration element. The March consultation states:

> The artificial division of the project adds complexity and potential delay to the process, it discourages Transport for London from maximising the amount of housing within any new development proposals and it can cause confusion to third parties.[99]

The Government proposed to confer powers on the GLA and TfL to allow them to promote a joint compulsory purchase order for transport and regeneration purposes for one site. The March consultation suggested that such powers could also be conferred on new combined authorities with mayors where similar bodies and powers exist.[100]

The Government's consultation response reported "overwhelming support" for this proposal. While the proposal to extend the power to new combined authorities with mayors was also welcomed, the Government said that it would "consider this matter further in the light of the emerging arrangements for combined authorities."[101]

Clause 26 provides that where TfL and the GLA agree that a compulsory purchase would be advanced by one or both of them for a joint project, the purposes for which one of them may acquire land are extended to the other. This enables either body to acquire all the land required for a combined transport and regeneration or housing scheme on behalf of the other.[102]

Advance payments of compensation

Clauses 28 to 30 make "technical" amendments to the provisions on advance payment of compensation which were made by the *Housing and Planning Act 2016*. The clauses aim to ensure that provision in the 2016 Act works as intended in all cases and in particular where the land is subject to a mortgage.[103]

5.4 Comment

The Royal Town Planning Institute (RTPI) said that while it was pleased that the Bill was "broadly in line" with its response to the Government's consultation, the Government "should be working towards a reform of CPO legislation that goes further and allows local authorities to play a more proactive role in land assembly." The RTPI wanted this further reform to "necessitate land being acquired at close to existing use value, with an additional premium provided to compensate land owners."[104]

---

99 HM Government, Consultation on further reform of the compulsory purchase system, 21 March 2016, para 63
100 Ibid, para 66
101 HM Government, Consultation on further reform of the compulsory purchase system: government response, 7 September 2016, para 65
102 Neighbourhood Planning Bill Explanatory Notes, Bill 61-EN, para 90
103 Neighbourhood Planning Bill Explanatory Notes, Bill 61-EN, para 94
104 RTPI, RTPI welcomes Neighbourhood Planning Bill, 7 September 2016

The British Property Federation said the measures to improve the compulsory purchase system were "particularly important" as they would deliver infrastructure projects "more quickly and efficiently".[105]

The provisions on temporary possession of land were welcomed by Paul Swinney, principal economist at think tank the Centre for Cities:

> "…this could work wonders for derelict sites by allowing them to be put to short-term use. "There's been a rise in ideas around using sites in the short term," he says. "If you can get an asset to contribute to the economy on a short-term basis, that can only be a good thing to the wider area."[106]

In relation to the provisions in clause 22 on clarifying the extent of the no-scheme world, Planning magazine reported a range of views from planning lawyers on whether this provision would reduce disputes:

> Philip Maude, director of compulsory purchase at legal firm Squire Patton Boggs, said that the clause should make it easier to settle claims more quickly in the longer term, but warned that the courts would need to hear "a few cases" to clarify its interpretation.
>
> Gary Soloman, planning partner at law firm Burges Salmon, doubted that the provisions would reduce disputes. "The ability for acquiring authorities to define the underlying scheme will no doubt result in disagreement, as will provisions to offset compensation payments against gains or losses on adjacent sites," he said.[107]

Richard Harwood QC, Barrister, 39 Essex Chambers warned that the changes to the compulsory purchase rules in the Bill, by amending existing legislation, could serve to increase the need for future consolidation of the law:

> The compulsory purchase and compensation changes are a further stage in seeking to modernise the system. However they will reinforce the need to codify and consolidate the legislation, which will now be spread over more Acts, and to update the language which dates back to Sir Robert Peel's government.[108]

---

105 "Neighbourhood Planning Bill: Reaction" *The Planner*, 7 September 2016

106 "PM receives mixed industry reaction to first planning bill" propertyweek.com, 15 September 2016

107 "Why latest changes to CPO rules may not prevent disputes" *Planning*, 15 September 2016 [subscription required]

108 Richard Harwood QC, Barrister, 39 Essex Chambers, Planning and Compulsory Purchase Reform: The New Bill, September 2016

BRIEFING PAPER
Number 07641
28 September 2016

About the Library

The House of Commons Library research service provides MPs and their staff with the impartial briefing and evidence base they need to do their work in scrutinising Government, proposing legislation, and supporting constituents.

As well as providing MPs with a confidential service we publish open briefing papers, which are available on the Parliament website.

Every effort is made to ensure that the information contained in these publicly available research briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated or otherwise amended to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Authors are available to discuss the content of this briefing only with Members and their staff.

If you have any general questions about the work of the House of Commons you can email hcenquiries@parliament.uk.

Disclaimer