



RESEARCH PAPER 08/41
30 APRIL 2008

Planning and Energy Bill: Committee Stage Report

This is a report on the Committee Stage of the *Planning and Energy Bill* produced in response to a recommendation of the Modernisation Committee in its report on *The Legislative Process* (HC 1097, 2005-6).

This Bill is a Private Member's Bill introduced by Michael Fallon MP, who drew first place in the 2007/08 ballot for Private Members' Bills. It would enable local planning authorities to set requirements for renewable and low-carbon energy generation and energy efficiency in local plans.

The Government opposed the Bill on Second Reading, but supported an amended version in Public Bill Committee on 20 February 2008. It is due for Report Stage on 9 May 2008.

Christopher Barclay

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Summary of main points

The *Planning and Energy Bill* is a Private Member's Bill introduced by Michael Fallon MP, who drew first place in the 2007/08 ballot for Private Members' Bills.

The aim is to encourage local authorities to require more local renewable energy generation or systems like combined heat and power in new developments. The Bill would enable local planning authorities to set requirements for renewable and low-carbon energy generation and energy efficiency in local plans.

The Government already has policies encouraging such targets in the Planning Policy Statement on Climate Change, but subject to important qualifications in paragraph 33. The targets must be tested by an independent inspector to ensure that they do not have any adverse impact on the development needs of the community. In the case of housing, they must be consistent with house building requirements. The Bill does not explicitly contain those qualifications.

The Government opposed the Bill on Second Reading on 25 January 2008. However, following negotiations, the Government agreed to support an amended Bill in Committee on 20 February 2008. One amendment would allow the targets to include near-site energy developments as well as those on the site itself. A second amendment would require compatibility with national policies on renewable energy, low carbon energy and energy efficiency.

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I Text of the original Bill

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Development plans

A local planning authority may in its development plan and development plan documents specify that any person making an application for planning permission should include such reasonable provision as the authority may specify for—

- (a) the generation of energy from renewable sources as part of the proposed development;
- (b) the generation of low carbon energy as part of the proposed development;
- (c) an energy efficiency standard in all, part or parts of the proposed development that exceeds that required by any building regulations in force at the time of the application.

2 Interpretation

(1) In this Act—

“development plan” has the same meaning as in the Planning and Compulsory Purchase Act 2004 (c. 5);

“development plan document” has the same meaning as in the Planning and Compulsory Purchase Act 2004;

“local planning authority” has the same meaning as in the Town and Country Planning Act 1990 (c. 8).

(2) For the purposes of any area in Wales the development plan is the local development plan adopted or approved in relation to that area.

3 Short title and extent

(1) This Act may be cited as the Planning and Energy Act 2008.

(2) This Act extends to England and Wales.

II Second Reading Debate on 25 January 2008

Michael Fallon introduced the Bill, including the following points:

This is not a big Bill, but it does one important thing: it will enshrine in law, I hope, the so-called Merton rule... Back in 2003, the London borough of Merton adopted in its local planning documents the policy that, for new developments, at least 10 per cent. of the new energy required must come from renewable or low-carbon sources on or near that development. The aim was to reduce the amount of energy that had to be brought in from miles away and to encourage microgeneration and more energy-efficient buildings, which would use less energy in the first place.

The Bill therefore gives Merton-style planning policies statutory protection. I should emphasise that it does not compel other councils to follow Merton, although around 100 are doing that. (...) What it does is to put on the statute book the ability of a council to adopt a Merton-style policy, if it wants to do so.

Without the Bill, councils will be left uncertain as to whether the policies that they adopt will remain legal.

(...) I would not be promoting this Bill if I thought that it would inhibit housing generally. I have made inquiries of Merton borough council, and it has assured me that no developer has ever had any difficulty in coping with its requirements. Let us look at the facts. Merton's policy is four years old, and its housing target—set by the Greater London authority—states that it must build 430 new homes each year. Since the policy was adopted in 2003, the actual annual totals of new homes constructed in Merton have been 484, 497, 546 and 528. So there is no evidence there that the policy inhibits the growth of new housing.

(...) In respect of the definition of "part of the proposed development", of course I want it to include near-site as well as on-site, provided that that is connected to the development. I also want to assure developers that this must involve a dedicated supply. They would not necessarily be required to supply energy over a much wider area.

(...) In the final analysis, Ministers will still have control.¹

Martin Caton supported the Bill. He noted:

Government planning inspectors responsible for overseeing the development plan process have sent out extremely mixed messages. For example, Reading was allowed to specify thermal performance requirements at least 12 per cent. higher than required in building regulations, but Cambridge was made to water down its planning policy, which required large developers to provide evidence of how they had minimised energy consumption and maximised energy efficiency and to consider the feasibility of using combined heat and power systems. To that, the planning inspector said that it was

"unreasonable to the extent that it imposes more onerous requirements than the Building Regulations".

The same line was taken by the Government office for the east of England when Bedford borough council wanted to reduce CO₂ emissions by 10 per cent. more than in the building regulations in certain developments. We need clarity and active encouragement for ambitious standard setting.²

Tom Brake noted that since 1997 CO₂ emissions had increased.³ The Bill would help to combat that and help the Government "face the very tough task of meeting the targets set by the European Union".

John Battle supported the Bill:

The Bill's purpose is to enable all local authorities to set renewable and low-energy targets for new developments. That could apply not just to individual

¹ HC Deb 25 January 2008 cc1733-6

² HC Deb 25 January 2008 c1738

³ HC Deb 25 January 2008 c1740

buildings, but to complexes. Without the Bill, I can envisage the game being played in the opposite way. Without a mandate to get on with meeting the 10 per cent. target, it could be challenged by people who would say “We will hold up the planning process because you are trying to suggest that we do something that we know we do not have to do.” The whole process could be stalled and blocked by authorities pulling us in the opposite direction from the best-practice councils gathered around Merton.⁴

Nick Hurd contrasted the Bill with Government policy:

The Government’s approach is in contrast to the Bill’s simplicity. They drip out bland planning guidance that encourages action as long as it does not compromise other social objectives and that comes on top of a botched consultation on the national standards that we need. (...) All that bends towards a target of zero-carbon homes by 2016, which sounds great on the airwaves but is not propped up by any credible detail or strategy for achieving or enforcing it. As the right hon. Member for Leeds, West suggested, surely by now, we have learned that simply expressing a remote target is not enough. (...)⁵

Chris Huhne noted:

[I]n Sweden, where average January temperatures are 7° C below ours, the average household energy bill is £385 a year less than the average household energy bill in the United Kingdom. That is an extraordinary condemnation of our failure to get to grips with the issue that he raises.⁶

Angela Watkinson said that the Bill would make a significant contribution in encouraging conservation in energy use in large non-residential developments.⁷

The Parliamentary Under-Secretary of State for Communities and Local Government (Mr. Iain Wright) explained why the Government did not support the Bill, although he welcomed its spirit:

The main thrust of my argument is twofold. First,... last year’s planning policy statement provides local authorities with what is required by the Bill, but gives us flexibility because we do not need primary legislation to deal with it. My second argument, which I shall advance in a moment, is that the range of legislation currently going through this House and the other place, such as the Climate Change Bill, the Energy Bill, the Planning Bill, most importantly, and the Housing and Regeneration Bill, provides other means by which we can achieve what is set out in this Bill. Because parliamentary time is extremely valuable, I would suggest that the Bill is not necessary. (...)

In summary, the planning rules [including the new Planning Policy Statement on Climate Change] go much further than the Bill, which would simply enable

⁴ HC Deb 25 January 2008 c1743

⁵ HC Deb 25 January 2008 c1747

⁶ HC Deb 25 January 2008 c1748

⁷ HC Deb 25 January 2008 c1750

councils to set requirements for energy generation. When councils do not take the new planning rules seriously and reflect them in their plans, they are more likely to find those plans amended or overturned.

Let me deal with the Bill. It would enable a local planning authority to specify for any development in its area: the generation of energy from renewable sources as part of the proposed development; the generation of low-carbon energy as part of the proposed development, and an energy efficiency standard in all, part or parts of a proposed development that exceeds any required by national building regulations.

My interpretation of the Bill, which the hon. Member for Sevenoaks reinforced in his opening speech, is that its purpose is to promote the Merton rule. As I said, the PPS [Planning Policy Statement] promotes Merton plus—and more. I want to make it clear that I disagree with the fundamentals of the Bill simply because it is impractical and ineffective. We therefore reject the means rather than the end.

The approach in the PPS means that councils need to examine the best options in their areas, which could mean on-site renewables or local low-carbon energy like CHP [combined heat and power]. It would not be sensible to specify rigidly the right solution for each development or to predict the most effective technology in the coming years. The pace of change in technology and research and development is too fast. For that reason, we do not want councils to insist on on-site renewables if there are better ways of cutting carbon from local energy.

Insisting on an on-site definition may be a barrier to local renewables. That is because a new housing development could get more power from a medium-sized wind turbine on a nearby hill or verge, rather than from one for every individual house in the development. A site near a power plant could utilise its surplus heat with a combined heat and power generator. A medium-sized wind turbine or a combined heat and power plant may not be feasible within many individual development sites but could provide the most cost-effective way of cutting carbon and be located locally and close to the development—perhaps on a highway verge or other open space.

He said that the Bill could be counter productive for several reasons:

First, the Bill does not replicate the safeguards within the PPS. Those safeguards will ensure that environmental standards are raised in a sensible way, so that we can continue to deliver the necessary levels of new housing at the same time. Whatever requirements councils set need to be tested publicly as part of the planning process and need to be compatible with delivering housing targets and affordable homes. The Bill does not have the same safeguards. It requires councils only to set targets that are “reasonable”, but as my right hon. Friend the Member for Leeds, West said, we could talk for hours—indeed, I am tempted to do so—about what is “reasonable”. As a result, the Bill could undermine our targets to deliver much-needed affordable housing.

Secondly, the Bill could rule out, for example, more cost-effective local but near-site energy solutions, by stipulating just on-site renewables or just low-carbon energy. That excludes local community energy schemes.

Thirdly, the Bill would enable councils to set their own energy efficiency standards. That would effectively allow every council to set their own building

regulations, which, as the Minister responsible for building regulations, I believe would cause huge problems for the delivery of new zero-carbon technologies and the delivery of housing.⁸

The Bill was given a second reading by 45 votes to none.

III Committee Stage

There was only one Committee Sitting, on 20 February 2008,⁹ but it was an important one partly because of a replacement of clause 1 and partly because the Government changed its position, to support for the Bill. The Committee's membership is given in the Appendix to this paper.

Michael Fallon proposed to replace clause 1 by the following new clause 1:

New clause 1—Energy policies—

'(1) A local planning authority in England may in their development plan documents, and a local planning authority in Wales may in their local development plan, include policies imposing reasonable requirements for—

- (a) a proportion of energy used in development in their area to be energy from renewable sources in the locality of the development;
- (b) a proportion of energy used in development in their area to be low carbon energy from sources in the locality of the development;
- (c) development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations.

(2) In subsection (1)(c)—

“energy efficiency standards” means standards for the purpose of furthering energy efficiency that are—

- (a) set out or referred to in regulations made by the appropriate national authority, or
- (b) set out or endorsed in national policies or guidance issued by the appropriate national authority;

“energy requirements”, in relation to building regulations, means requirements of building regulations in respect of energy performance or conservation of fuel and power.

(3) In subsection (2) “appropriate national authority” means—

- (a) the Secretary of State, in the case of a local planning authority in England;
- (b) the Welsh Ministers, in the case of a local planning authority in Wales.

(4) The power conferred by subsection (1) has effect subject to subsections (5) to (7) and to—

- (a) section 19 of the Planning and Compulsory Purchase Act 2004, in the case of a local planning authority in England;
- (b) section 62 of that Act, in the case of a local planning authority in Wales.

⁸ HC Deb 25 January 2008 cc1760-70

⁹ PBC Deb 20 February 2008 cc1-14

(5) Policies included in development plan documents by virtue of subsection (1) must not be inconsistent with relevant national policies for England.

(6) Policies included in a local development plan by virtue of subsection (1) must not be inconsistent with relevant national policies for Wales.

(7) Relevant national policies are—

(a) national policies relating to energy from renewable sources, in the case of policies included by virtue of subsection (1)(a);

(b) national policies relating to low carbon energy, in the case of policies included by virtue of subsection (1)(b);

(c) national policies relating to furthering energy efficiency, in the case of policies included by virtue of subsection (1)(c).¹

He explained that the change reflected intensive discussion he had had with the Department for Communities and Local Government and other parties:

I draw the Committee's attention to two main aspects of new clause 1. Subsection (1) is similar to the original clause 1, but with one significant improvement. The potential specification is widened to include near-site sources... That significant gap in the Bill's drafting was well articulated by the Under-Secretary of State for Communities and Local Government, the hon. Member for Hartlepool (Mr. Iain Wright), in his speech on Second Reading. He certainly convinced me that it needed improvement. We have therefore replaced the original words

“as part of the...development”

with

“in the locality of the development”.

I want to make it clear to the Committee that “in the locality of” includes both on-site and near-site; it is certainly not an invitation to developers to prioritise near-site over on-site. It includes both.

The second improvement to clause 1 is made under subsections (5) and (6) of new clause 1, which ensure that new development policies must not be inconsistent with national policies. I thought originally that it would be possible to say that such policies must have regard to national policies, but I am assured that that would not have enabled us, for example, to have excluded remote sources and might otherwise have led the Bill into inconsistency with other national policies such as the right of consumers to choose their energy supply through a competitive market and the right of the Government and all of us to encourage more affordable housing. Those are the two major improvements in new clause 1 over the original clause.

Michael Fallon also explained the reasons for the other amendments: Amendment No. 2, in clause 2, page 1, leave out lines 15 and 16; Amendment No. 3, in clause 2, page 1, line 17, after ‘in’ insert ‘Part 2 of’; Amendment No. 4, in clause 2, page 1, line 21, leave out subsection (2).

Amendment No. 2 is an improvement because the definition of development plan that I spelt out in the draft is simply not necessary. Amendment No. 3 is technical and would tidy up the definition under the Planning and Compulsory Purchase

Act 2004. Amendment No. 4 deals with Wales and would make it clear that that provision is better included in subsection (1). I hope that that explains the group that is before us.

Caroline Flint, the Housing Minister, explained the Government's position on the amended Bill:

In the brief span that I have been the Minister with responsibility for housing and planning, I am pleased to have had an opportunity to engage constructively and positively with the hon. Member for Sevenoaks. My hon. Friend the Member for Southampton, Test has also been party to some of our discussions on the revised Bill. Part of our discussion has been about how we can use the Bill to reinforce the direction of the planning guidance that is already available, which requests and requires local authorities to consider how they can reduce carbon emissions. To that end, we have sought to find a way forward that is positive on all counts through amendments to the Bill as outlined by the hon. Gentleman.

We are all agreed that we have to do a lot more in Government, in local authorities and as individuals to change the balance of how emissions affect our climate. In doing so, hopefully we can offer to future generations not only a cleaner and greener Britain, but a cleaner and greener planet on which to live.

I fully support the intentions behind the Bill. I know that on Second Reading my hon. Friend the Under-Secretary said that we were not initially convinced that the Bill was necessary, but I recognise the positives that can be taken from placing such a power in primary legislation. In particular, it will reassure local authorities that they can go further, faster than through building regulations and within a national framework. It will mean that there is no place to hide for local authorities who do not want to take up this agenda, a point that has been part of our recent discussions. It will enable us to underline everyone's commitment to using local energy, including on-site and near-site green energy, in new developments. Although this might not be a realistic outcome, it could also protect against the possibility of there being no planning policy because if planning policy is cancelled, for whatever reason, the Bill will remain. Those are four examples of where the Bill reinforces our current guidance and targets in this area.

Other speakers - **Julia Goldsworthy**, **Colin Challen**, **Gregory Barker** and **Dr Alan Whitehead** – supported the Bill with its amendments.

Another amendment replaced the word “generation” by the word “use” in the title of the Bill. This changed it from:

A Bill To
Enable local planning authorities to set requirements for energy generation and energy efficiency in local plans.

To:

A Bill To
Enable local planning authorities to set requirements for energy use and energy efficiency in local plans.

The replacement of clause 1 by new clause 1 and all the amendments were approved without a vote.

Appendix: Membership of the Public Bill Committee

Chairman: Mr. Peter Atkinson

† Barker, Gregory (Bexhill and Battle) (Con)

Battle, John (Leeds, West) (Lab)

Bayley, Hugh (City of York) (Lab)

† Challen, Colin (Morley and Rothwell) (Lab)

Drew, Mr. David (Stroud) (Lab/Co-op)

† Fallon, Mr. Michael (Sevenoaks) (Con)

† Flint, Caroline (Minister for Housing)

† Goldsworthy, Julia (Falmouth and Camborne) (LD)

† Hurd, Mr. Nick (Ruislip-Northwood) (Con)

Jack, Mr. Michael (Fylde) (Con)

Meacher, Mr. Michael (Oldham, West and Royton) (Lab)

Morley, Mr. Elliot (Scunthorpe) (Lab)

Rogerson, Dan (North Cornwall) (LD)

† Ruane, Chris (Vale of Clwyd) (Lab)

† Whitehead, Dr. Alan (Southampton, Test) (Lab)

† Wiggin, Bill (Leominster) (Con)

Chris Shaw, Committee Clerk

† attended the Committee