Localism Bill: Planning

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- This note gives a short overview of some of the main planning parts of the *Localism Bill* 2010-12, as it leaves the House of Commons.
- The Bill will abolish regional planning, including regional housing targets. It does not contain the system designed to stimulate house building by allowing local authorities to retain council tax from new property – the New Homes Bonus system.
- The Bill will abolish the Infrastructure Planning Commission, so as to retain a system where the final decision on major infrastructure projects is taken by the Secretary of State.
- The Government wants a presumption in favour of sustainable development, but in planning guidance not on the face of the Bill.
- An amendment to create a community right of appeal was opposed by the Government and rejected in Committee.
- The Bill will place a duty to co-operate on local councils so as to achieve planning beyond local authority boundaries.
- A Government amendment will allow local planning authorities determining planning applications to take into account the amount of money to be received from new homes bonus, community infrastructure levy or planning obligations.
- The Bill will introduce a completely new neighbourhood planning regime.
- Government planning guidance – a major source of planning policy - is to be replaced by the National Planning Policy Framework (NPPF) early in 2012. A draft NPPF was published for consultation on 25 July 2011.
- Further details can be found in Research Papers prepared for the Commons Stages of the Bill, Localism Bill: Planning and Housing and Localism Bill: Committee Stage Report.

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1 Introduction

The original Bill

Part 5 of the Bill will abolish regional planning, introduce a neighbourhood planning regime and abolish the Infrastructure Planning Commission, along with other changes. The planning measures in the Bill apply to England and Wales only, except that **Clause 107**, relating to abolition of the Infrastructure Planning Commission, affects pipelines crossing the Scottish border.

Chapter 1 will abolish regional strategies and introduce a duty to co-operate for local authorities and public bodies. It will increase the freedom of a local planning authority in adoption of development plan documents.

Chapter 2 will amend the Community Infrastructure Levy, introduced by the Labour Government just before the General Election. The Bill will require a significant proportion of the money charged to developers to go to local projects.

Chapter 3 will introduce a neighbourhood planning regime, allowing both neighbourhood plans and neighbourhood development orders to be prepared in draft by a parish council or similar body, which are then submitted to independent examination. The results would have to be adopted if favoured by 50% of those voting in a referendum, provided that certain international obligations are not infringed. Community Right to Build is covered by a similar procedure.

Chapter 4 will introduce new requirements for consultation for large planning applications other than major infrastructure projects of national importance which already have such requirements.

Chapter 5 will increase enforcement powers, particularly in relation to development undertaken without planning consent.

Chapter 6 will abolish the Infrastructure Planning Commission, restoring to the Secretary of State the final decision. Other changes are made to the consent procedures for nationally significant infrastructure projects.

Commons Second Reading Debate
Secretary of State, **Eric Pickles**, gave an overview of the measures:

> The Bill will return the planning system to the people. Targets do not build homes, and regional plans do not get communities involved. Today, we have an adversarial, confrontational system, fomented on mistrust and a sense of powerlessness. It is simply not working. The Bill will therefore create genuine neighbourhood planning, by which the community will develop in ways that make sense for local people. Instead of instructions being handed down from on high, the Bill will offer incentives to invest in growth. Instead of unelected commissioners making national decisions on important national infrastructure, those choices will again be down to democratically elected Ministers in this House.[1]

Barbara Keeley, summing up for the Opposition, was critical:

> The Bill aims to allow communities a say on developments in their area through the planning system, but those measures are particularly poorly thought through. Indeed, the Royal Town Planning Institute says that work is needed on the Bill
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> > "to remove those barriers in its drafting that deaden its effectiveness and hinder the ability of Government to achieve its own objectives"
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> and that
>
> > "the lack of a coherent strategic planning system combined with the complexity of the neighbourhood planning system"
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> that the Bill proposes will
>
> > "hinder...economic recovery...addressing climate change and enhancing the environment".
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> On that last point, 17 organisations in the Wildlife and Countryside Link say that the Bill must:
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> > "Introduce...strategic planning across local authority boundaries".
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> They feel that the Bill risks creating a two-tier system in which
>
> > "only well-resourced neighbourhoods can take part",
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> which echoes the comments that we have heard from many hon. Members.[2]

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1 HC Deb 17 January 2011 c563
2 HC Deb 17 January 2011 c652

Commons Committee Stage
The planning part of the Bill was not substantially altered in Committee, although there were a few technical Government amendments. More important was the fact that in several major areas, the Government promised to reconsider, with the option of bringing proposals at Report Stage:

- Should local authorities need to have an up-to-date development plan in place by the end of 2012, after which a presumption in favour of sustainable development would apply? (clause 92)

- Should Community Infrastructure Levy payments be available for affordable housing? (clause 94)

- How best to give the business community a legitimate role in neighbourhood planning? (Schedule 9)

- Should local government officers and planning inspectors be included among those entitled to carry out independent examination of draft neighbourhood development plans? (Schedule 10) – The Government has agreed to this suggestion

- Should planning law heritage protection for conservation areas and the setting of listed buildings be maintained by neighbourhood plans? (Schedule 10) – The Government has agreed to this suggestion

- Could the procedure for planning applications for major infrastructure projects of national significance be simplified? (Schedule 13, but any proposals would probably come in the Lords stages)

Commons Report Stage
The Report Stage saw a wide range of planning issues debated together on 17 May 2011. The Government tabled a new clause that was added to the Bill after a vote:

New Clause 15 - Applications for Planning Permission: Local Finance Considerations, approved by 297 votes to 232 (c285)

In addition, Government amendments were passed on:

The duty to co-operate; adoption and withdrawal of development plan documents; neighbourhood planning; the process for making neighbourhood development orders; neighbourhood planning: community right to build orders; financial assistance in relation to neighbourhood planning; consultation before applying for planning permission.

2 Sustainable Development

2.1 What is it about?

A document published by the Conservative Party when in Opposition proposed introducing a presumption in favour of sustainable development. The idea was to balance other proposed changes to the appeal system that would tend to make it harder to gain consent. That latter proposal has been dropped so that the grounds for appealing remain unchanged. The Government has retained its support for a presumption in favour of sustainable development but wants it to be in planning guidance rather than legislation. The version of the presumption in the Plan for Growth published on Budget day stressed the pro-development side rather than the sustainability.

2.2 Committee stage and Government policy

Jack Dromey moved amendment 133 to Clause 92, to explore the Government's commitment to the presumption in favour of sustainable development, and to reflect concerns about delays that the introduction of local plans might bring. The amendment would place a deadline on local authorities so that they would need to have an up-to-date development plan in place by the end of 2012, after which a presumption in favour of sustainable development would apply.[3]

Greg Clark said that **Jack Dromey** had made a good case, and the Government would consider the suggestion.[4]

The amendment was withdrawn. Clauses 92 and 93 were ordered to stand part of the Bill.

The HM Treasury/BIS Plan for Growth (March 2011) promised:

> **2) The Government will introduce a powerful new presumption in favour of sustainable development, so that the default answer to development is 'yes'.**
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> 2.11 The Government will introduce a new presumption in favour of sustainable development, a principle which will underpin the entire National Planning Policy Framework. This will set out the Government's clear expectation that the default answer to development and growth should be 'yes', except where this would compromise the key sustainable development principles set out in national planning policy.
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> 2.12 The presumption will reinforce a pro-growth emphasis on plan-making. It will require local authorities to work promptly to accept applications that comply with up-to-date plans and national planning policies. Local authorities will be expected to have an up-to-date core strategy in place. Where local authorities do not have plans for development, or they are silent, out of date or indeterminate, this policy will mean that local authorities should start from the presumption that applications for development and job creation will be accepted, for example, in relation to disused commercial premises or former Ministry of Defence sites. The Government will publish a draft presumption in favour of sustainable development in May 2011, alongside details of how it proposes to integrate the presumption into national planning policy.

3 Community Right of Appeal

3.1 What is it about?

The disappointed applicant has the right to appeal to the Secretary of State against rejection of a planning application. There is no equivalent right for an individual or a third party to appeal against the grant of planning consent. The Conservative Opposition proposed introducing the right, but the idea is not in the Bill. An amendment was debated in Committee but rejected.

3.2 Stephen Gilbert's new clause 11 in Committee

A New Clause was moved in the Commons Committee stage, for a Community Right of appeal. The clause shows the limited nature of the proposed right:

> New Clause 11
>
> Community right of appeal

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3 PBC Deb 17 February 2011 cc639-41

4 *Ibid* c641

‘(1) The Town and Country Planning Act 1990 is amended as follows.(2) In section 78 (appeals to the Secretary of State against planning decisions and failure to take such decisions) after subsection (2) insert—“(2A) Where a planning authority grants an application for planning permission and—(a) the authority has publicised the application as not according with the development plan in force in the area in which the land to which the application relates is situated; or (b) the application is one in which the authority has an interest as defined in section 316;certain persons as specified in subsection (2B) below may by notice appeal to the Secretary of State, provided any one of the conditions in subsection (2C) below are met.(2B) Persons who may by notice appeal to the Secretary of State against the appoval of planning permission in the circumstances specified in subsection (2A) above are—(a) the ward councillors for the area who have lodged a formal objection to the planning application in writing to the planning authority, or where there is more than one councillor, all councillors by unanimity;(b) any parish council or neighbourhood forum by two thirds majority voting, as defined in Section 61F, covering or adjoining the area of land to which the application relates is situated; or(c) any overview and scrutiny committee by two thirds majority voting.(2C) The conditions are:(a) section 61W(1) of the Town and Country Planning Act 1990 applies to the application;(b) the application is accompanied by an Environmental Impact Assessment;(c) the planning officer has recommended refusal of planning permission.(3) Section 79 is amended as follows—(a) In subsection (2), leave out “either” and after “planning authority”, insert “or the applicant (where different from the appellant)”;(b) In subsection (6), after “the determination”, insert “(except for appeals as defined in section 78 (2A) and where the appellant is as defined in section 79 (2B)).”.’.—(Stephen Gilbert.)

Stephen Gilbert moved the clause, including the following points:

The proposed system of neighbourhood planning and neighbourhood development orders will present several challenges, as has been discussed. Crucially, the system will be voluntary. While Ministers expect between 20% and 60% of the country to move to the new system, we need to do more to drive up the take-up for the Bill’s measures. Key among that would be putting in place a system of checks and balances. A community right of appeal against planning applications submitted under the current regime could be a key element in pushing local neighbourhoods to fulfil the Government’s desire.

Of course, we have to guard against vexatious appeals and appeals driven by commercial interest, which is why in new clause 11 I have tried to set a high threshold for the issues that could trigger an appeal and the bodies that would be able to appeal. A community right of appeal as defined in the new clause could be triggered only where a decision to grant a planning permission is not in line with an already adopted plan, or where the local authority itself has a particular interest in the application and so could be construed as conflicted in its ability properly to determine the application. There are many controversial planning issues, such as one in my constituency regarding an incinerator and energy from waste recovery facility, which the local authority is pursuing. It has been rejected by the local authority’s planning committee, but there is a clear interest in getting it through. The new clause would set a high bar regarding who would be able to appeal, limiting the right to a number of representative groups.

We need to be absolutely clear. As the Bill is drafted, developers will still be able to submit planning applications that are contrary to a local or neighbourhood plan, as well as appeal against any refusal based on the provisions of that plan. The changes put forward in the Bill may reduce the chance of appeals being successful where neighbourhood plans are in place, but we should not lull ourselves into a false sense of

security and think that the Bill, as it stands, will eliminate appeals in the planning system.

Indeed, over the past 10 years, appeals have become a more prominent part of the planning system. It is estimated that over 8,000 planning applications were deemed to have significantly cut across agreed development plans. That is a tiny part of the 6 million applications in the period, but those 8,000 cases are likely to have had a more significant impact on local communities, because they go outside agreed plans and are therefore controversial enough to be referred to the Secretary of State. (...)

Community rights of appeal exist in other countries. In Ireland, 8%—almost one in 10—of all planning applications were appealed against in 2008. Ireland has a community right of appeal, and the split in that 8% was roughly 50-50. New Zealand has an established right of public appeal against the grant of planning consent, and it acts as an incentive for developers and planning authorities to focus their efforts on plan making and pre-application discussion. Australians also enjoy a community right of appeal. In none of those countries has a community right of appeal been an impediment to economic growth. Indeed, by forcing developers and communities to work together, it has acted as an incentive for properly managed economic growth and properly discussed community plans.

Too often, local planning can be characterised by large developers railroading unpopular proposals through the planning system, using their unrestricted right of appeal to wear down local opposition and intimidate local authorities. A community right of appeal could be a useful additional weapon in the arsenal of local councillors and local communities in redressing those tactics. A community right of appeal should be seen as a vital part of the overall localism agenda—a part that is necessary to ensure that the reforms in this landmark Bill reach their full potential.

Where decisions are taken that are not in line with an agreed development plan, and that can therefore be considered to be against the wishes of the local community, representatives should be able to question those decisions through an appeals process. That is my view, and it is the contention of new clause 11.[5]

The Minister, **Greg Clark**, disagreed:

My hon. Friend the Member for St Austell and Newquay is absolutely right that when we were in opposition, we considered, in our reforms to the planning system, whether it was right to establish a third-party right of appeal. At the time, however, there was not the degree of progress in devolving power to neighbourhoods that the Bill proposes. We want communities to have much greater ability to use plans to shape their future. We want to move away from a reliance on the appeals mechanism for resolving such matters; my hon. Friend is absolutely right about that.

The question then arises: do we allow no departure, under any circumstances, from an adopted local plan, including a neighbourhood plan? Discussions that we have had with parties representing a wide range of interests suggest that it is important to have a degree of flexibility, so that if there are exceptional circumstances that were not captured in the plan, it is not necessary to disapprove, or be obliged not to approve, an application that enjoys a degree of consent. It is right to have that limited degree of discretion. However, it is obvious from our discussions, from the Bill, if adopted, and certainly from the national planning framework that the importance and the centrality of the plan are very much enhanced. People's ability to set out their aspirations in the plan is captured in those things.

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5 PBC Deb 10 March 2011 cc931-3

> The next question is: if there are to be exceptional departures from the plan, who should decide whether that is in the community's interest? We have a choice between an unelected body—the Planning Inspectorate based in Bristol—or elected local councillors. It is consistent with the type of approach that we want that that power should be vested in local democratically elected and accountable people. They have access to members of the community. They represent the community. They can make a more sensitive judgment than would be possible if the matter were contracted to a third party.
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> We have safeguards in place to ensure that the interests of the community cannot be ridden roughshod over. First, there is the importance of the plan. Secondly, there is the fact that any decision to depart from the plan must be in limited circumstances and can be taken only by representatives of the community in the planning committee. My hon. Friend the Member for St Austell and Newquay mentioned developers being in a position to influence, but developers are not represented on planning committees in the way that residents are, so the ability of elected representatives to determine the outcome is entrenched.
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> It is necessary to reflect on the need to make the planning system more plan-based and less subject to the appeals mechanism, so that it is more fit for purpose, less costly and more accessible. I would regret my hon. Friend's new clause resulting in extra cost, delay and uncertainty in applications, when part of the point of pre-loading things into plans is the ability to reduce some of that uncertainty and delay.
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> Business organisations and many of the developers that will need to invest in our infrastructure, particularly in local infrastructure, are concerned that the proposal would introduce greater expense and delays into the system. The right hon. Member for Greenwich and Woolwich described it, or a previous incarnation of it, as a barmy measure. I would not go that far, because coming from a system in which there was little confidence in local people's ability to have their say and their way, I understand its provenance.[6]

The new clause was not put to a vote, so was not added to the Bill.

4 Duty to co-operate

4.1 What is it about?

The *Localism Bill* will abolish regional planning but does not increase planning powers for county councils. Instead the basis for planning at anything beyond local level is the duty to co-operate. The question is whether the duty to co-operate will be adequate to achieve planning beyond local authority boundaries.

4.2 The debate in Committee

Evidence to the CLG Committee contained some criticisms:

Simon Marsh (RSPB) argued that the proposed duty to co-operate was little more than a duty to discuss with neighbouring authorities, and very much focused on strategic infrastructure, not on the wider range of environmental issues requiring strategic planning.[7] **Shaun Spiers** (CPRE) was concerned that the means of achieving planning on more than a

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6 PBC 10 March 2011 cc933-6

7 PBC Deb 27 January 2011 cc124-5

local scale appeared to be local enterprise partnerships. They were led by business, and had no duty to consider sustainable growth.[8]

The issue was raised during the debate on the committee stage:

David Ward proposed amendment 194, arguing for a statutory base for local enterprise partnerships (LEPs). The Government wanted LEPs to take on a strategic function in planning and infrastructure but there was no statutory involvement or requirement. They would be taken more seriously if they were given a role in the duty to co-operate.[9]

Greg Clark rejected the idea in NC8 that the country should be divided into economic areas with one LEP in each. The Government had invited businesses and communities to describe the economic geography they considered most relevant. The Local Government Association opposed NC8, so as to retain as much flexibility as possible. LEPs covered 87% of the English population. The sale of RDA assets had to secure the best return for the taxpayer.[10]

The amendment was withdrawn.

5 Applications for Planning Permission: Local Finance Considerations

5.1 What is it about?

A Government New Clause would allow a local planning authority to take into consideration the amount of money paid under planning obligations or new homes bonus or community infrastructure levy. The Government says that this would merely confirm the existing legal position. Critics say that it makes a fundamental change by allowing a planning authority to approve a bad application because of the amount of money they would gain from it.

5.2 The Government new clause at Report Stage

New Clause 15

Applications for planning permission: local finance considerations

'(1) Section 70 of the Town and Country Planning Act 1990 (determination of applications for planning permission: general considerations) is amended as follows.

(2) In subsection (2) (local planning authority to have regard to material considerations in dealing with applications) for the words from "to the provisions" to the end substitute "to—

(a) the provisions of the development plan, so far as material to the application,

(b) any local finance considerations, so far as material to the application, and

(c) any other material considerations."

(3) After subsection (2) insert—

"(2A) Subsection (2)(b) does not apply in relation to Wales."

(4) After subsection (3) insert—

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8 PBC Deb c125 and 134
9 PBC Deb 17 February 2011 cc605-8
10 PBC Deb 17 February 2011 cc615-8

"(4) In this section—

"local finance consideration" means—

(a) a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown, or(b) sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy;

"Minister of the Crown" has the same meaning as in the Ministers of the Crown Act 1975;

"relevant authority" means—

(a) a district council;(b) a county council in England;(c) the Mayor of London;(d) the council of a London borough;(e) a Mayoral development corporation;(f) an urban development corporation;(g) a housing action trust;(h) the Council of the Isles of Scilly;(i) the Broads Authority;(j) a National Park authority in England;(k) the Homes and Communities Agency; or(l) a joint committee established under section 29 of the Planning and Compulsory Purchase Act 2004."'.—

(Greg Clark.)

The Minister, **Greg Clark**, denied that New Clause 15 was a major change:

> Government new clause 15 deals with local finance matters, which has caused the hon. Member for Birmingham, Erdington and his colleagues some concern in recent days. The proposal makes it clear that local finance matters that are relevant to planning considerations can be taken into account. It does not change the law in any way, and it is not some stealthy way in which to introduce a new basis for planning policy. Everyone knows that section 106 payments that are material in planning matters can be taken into consideration. The new clause reflects the fact that the introduction of the community infrastructure levy, and, potentially, other rebates to the local community, as I like to call them, can be used for planning purposes. It is important to be clear, lest there is any doubt on the part of local authorities, that such rebates, just like under section 106, can be made when they are relevant to planning considerations.[11]

However, the Royal Town Planning Institute (RTPI) disagreed:

> A late attempt by the Government to introduce a highly controversial measure to reward councils who say 'yes' to development has today been condemned by the Royal Town Planning Institute (RTPI) as completely unacceptable and contrary to what ministers told the Communities and Local Government Select Committee in February.[12]

The RTPI briefing on the Bill explained:

> **D. Financial considerations as a material consideration**
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> 20. The Government has tabled an amendment to introduce a new clause (15) which states that:
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> A local planning authority is to have regard to material considerations in dealing with applications including any local finance considerations, so far as material to the

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11 HC Deb 17 May 2011 c270

12 Royal Town Planning Institute, Localism Bill: last minute attempt to allow cash for planning permissions is wrong, 12 May 2011

application. “local finance consideration” means: a grant or other financial assistance that has been, or will or could be, provided to a relevant authority by a Minister of the Crown [this may be taken to cover the payment of New Homes Bonus], or sums that a relevant authority has received, or will or could receive, in payment of Community Infrastructure Levy;

21. Current government guidance states; ‘the fundamental principle that planning permission may not be bought or sold’. The Nolan Committee’s 1997 Report on Standards of Conduct in Local Government highlighted the need to safeguard against any public perception that planning permissions were being bought and sold.

22. For this reason, whilst it is good practice that the viability of a scheme will be taken into account, incentives and inducements attached to a development have not been a material consideration in deciding on planning applications, unless such payments are required to make an otherwise unacceptable development acceptable by paying for, for example, road access to the site.

23. Indeed, this was the current Government’s clear stance just three months ago when it stated in its February 2011 response to consultations on the New Homes Bonus that:

Local planning authorities will be well aware that when deciding whether or not to grant planning permission they cannot take into account immaterial considerations. The New Homes Bonus cannot change this and nor is it intended to. Local planning authorities will continue to be bound by their obligations here.

24. The RTPI believes that the Government position stated just three months ago is the correct one and will press for this amendment to be withdrawn or voted against.[13]

6 Neighbourhood Planning

6.1 What is it about?

The Bill will introduce a completely new neighbourhood planning regime. A parish council (or a body nominated by the local authority if there is no parish council) can prepare a draft neighbourhood plan. The draft plan will go to independent examination to be checked for conformity to national policy and local strategic policy. If it passes that test, it will go to a local referendum. If it is supported by 50% of those voting, the plan will have to be adopted, provided that it does not infringe international obligations like the European Convention on Human Rights.

It is difficult to know how the new regime would function, partly because it is so new and partly because the Government has not published any consultation or guidance or draft regulations. The Government has already amended the bill to allow businesses to prepare neighbourhood plans. Major uncertainties include:

- How many neighbourhood plans will there be?

There might be just a few or there might be hundreds.

- Will neighbourhood plans be used to block unpopular development?

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[13] Royal Town Planning Institute, RTPI Briefing on the Localism Bill, 16 May 2011

Many people would like to use neighbourhood planning to prevent wind farms or Gypsy camp sites or new housing developments. The examiner has to have regard to national policies and advice contained in guidance issued by the Secretary of State. It remains to be seen whether that requirement will prevent neighbourhood plans from blocking unpopular development.