Infrastructure Bill: Planning Provisions

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The Queen's Speech announced that an Infrastructure Bill would be introduced in this Parliamentary session. The Infrastructure Bill started in the House of Lords and is now in the Commons as Bill 154 2014-15. The Bill had its Commons second reading debate on 8 December 2014. The committee stage of the Bill in the Commons was held from 16 December 2014 – 15 January 2015. The next stage for the Bill, the report stage, is schedule for 26 January 2015. This note explains the planning provisions in the Bill in more detail.

The Bill is wide-ranging and covers many areas. A number of planning reforms are included to increase efficiency in the planning system by:

- making changes to the procedures in the *Planning Act 2008* for handling minor changes to existing development consent orders (DCOs) for nationally significant infrastructure projects (NSIPs). It would also simplify the processes for making significant changes;
- allowing the examining authority, (a panel of planning inspectors who consider DCO applications), to be appointed earlier on in the process, immediately after an application has been accepted;
- allowing the examining authority panel to comprise only two inspectors; and
- allowing certain types of planning conditions to be regarded as discharged if a local planning authority has not notified the applicant of their decision within a set time period.

A new clause, now clause 27, was added to the Bill at Commons committee stage which would introduce a new power for the Mayor of London to make Mayoral Development Orders, which would grant planning permission for development on specified sites within Greater London in response to an application from each local planning authority. The planning clauses have been generally uncontentious during their passage through both Houses and have remained un-amended to date. This note focuses only on the planning-related provisions in the Bill (clauses 23-27). The territorial extent has the same extent as the legislation to which it relates. For further information about the Bill as a whole see Library Research Paper, *Infrastructure Bill* (RP 14/65).

Contents

1 Introduction

The Queen's Speech on 4 June 2014 announced that an Infrastructure Bill would be introduced in the 2014-15 Parliamentary session.

The *Infrastructure Bill*, now House of Commons Bill 124 2014-15, had its first reading in the House of Lords on 5 June 2014 and has now completed all of Lords stages. The planning clauses (clauses 23-26) were not amended during its passage through the House of Lords. Second reading debate in the House of Commons was held on 8 December 2014. The next stage is House of Commons Committee Stage, which begins on 16 December 2014. Clause numbers in this note relate to the clause numbers in the Bill as introduced in the House of Commons, (Bill 124 of session 2014-15).

The planning provisions in the *Infrastructure Bill* make amendments to the *Planning Act 2008* and the *Town and Country Planning Act 1990*. The territorial extent has the same extent as the legislation to which it relates.

The Bill is wide-ranging and covers many areas, including: proposals to turn the Highways Agency into a Government owned company; giving communities the right to buy a stake in a local renewable electricity scheme; increasing the powers of the Land Registry; and a number of planning reform proposals designed to increase efficiency in the planning system. The background document accompanying the Queen's Speech set out the planning provisions as follows:

> Nationally Significant Infrastructure Projects

- The Bill would simplify the process for making changes to Development Consent Orders (DCO) by speeding up non-material changes to a DCO, and allowing simplified processes for material changes.

- The Bill would allow the Examining Authority to be appointed immediately after an application has been accepted and for the panel to comprise two inspectors, speeding up the process and saving money.

Deemed discharge for certain planning conditions

- The Bill would allow certain types of planning conditions to be discharged upon application if a local planning authority has not notified the developer of their decision within a prescribed time period, reducing unnecessary delay and costs.[1]

This note focuses only on the planning-related provisions in the Bill and not on the land, energy, highways or other aspects. For further information about the Bill as a whole see House of Commons Library Research Paper, *Infrastructure Bill*, RP 14/65, 4 December 2014.

For information about other proposed changes to the planning system which are not provided for in this Bill, see Library standard note, SN 6418, Planning Reform Proposals.

2 Nationally Significant Infrastructure Projects

The *Planning Act 2008* introduced a new development consent process for Nationally Significant Infrastructure Projects (NSIPs). NSIPs are usually large scale developments (relating to energy, transport, water, waste water or waste) which require a type of consent known as "development consent". The *Growth and Infrastructure Act 2013* introduced an extension of the regime to certain business and commercial projects. A Development Consent Order (DCO) automatically removes the need to obtain several consents that would otherwise be required, including planning permission and compulsory purchase orders. The idea of this regime is that it is a quicker (approximately 15 months) and simpler process for NSIPs to gain several consents in one application.

Originally, the final decision on whether development consent should be granted rested with the Infrastructure Planning Commission (IPC), a non-departmental public body which would take decisions in line with National Policy Statements designated by Government. The 2008 Act was subsequently amended by the *Localism Act 2011*, which abolished the IPC. The final decision on granting a DCO now rests with the Secretary of State for that field, based on advice from planning inspectors in the National Infrastructure Directorate of the Planning Inspectorate – known in legislation as the "examining authority".

For further information about the planning process for NSIPs see HC Library standard note, *Planning for Nationally Significant Infrastructure Projects* (SN/6881).

In the National Infrastructure Plan 2013 the Government announced that it would continue to refine the NSIP regime, and published an overarching review discussion document alongside the Plan.[2] In scoping this review document the Government conducted interviews with around 40 organisations and individuals with experience of using the regime. From this the Government determined that there was no need for a wholesale change to the regime, that in

1 HM Government, *Queen's Speech 2014 Background Document*, 4 June 2014, p25

2 HM Government, *Reviewing the Nationally Significant Infrastructure Planning Regime: A discussion document*, December 2013

general it was working well and that any big change could damage confidence and prevent future applications. There was a consensus that some minor changes to smooth the operation of the regime were required.

The Government responded to the discussion document in April 2014.[3] Annex A to the response set out the actions that the Government intended to take to change the system, how and when. A number of the proposals could be achieved without further legislation. Those requiring legislation and contained in this Bill are:

- to allow the inspectors (the "examining authority") to be appointed once an application has been accepted, rather than after the developer has publicised their application;
- to allow the appointment of two inspectors to be the examining authority; and
- to simplify the process for making changes to DCOs by speeding up the process for making non-material changes to a DCO, and to create a simplified process for material changes.

Further information about the changes proposed in this area has been published in:

- Department for Communities and Local Government, *Infrastructure Bill: Nationally Significant Infrastructure Projects: Briefing note*, June 2014; and
- Department for Communities and Local Government, *Technical Consultation on Planning*, July 2014, section 6 and *Making changes to Development Consent Orders: government response to consultation*, November 2014.

2.1 Earlier appointment of inspectors: clause 23

Clause 23 of the Bill would amend section 61 of the 2008 Act to allow for the earlier appointment of examining authorities. It would allow the Secretary of State to appoint an examining authority immediately after an application for a DCO had been accepted under section 55 of the 2008 Act, rather than having to wait until the applicant has publicised the application. This measure is designed to speed up the process to "give inspectors an additional six to eight weeks to become familiar with the issues."[4]

2.2 Appointment of two inspectors: clause 24

Under the 2008 Act the examining authority can comprise 1, 3 or 4-5 inspectors, depending on the size and complexity of the case being examined. The original reason for this relates to when the decision on the DCO was taken by the IPC and was designed to reduce the number of situations where the panel decision was tied.

The examination fee (which the developer pays) is largely determined by the number of inspectors handling the application. In the Government response to the discussion document it explained that allowing two inspectors could reduce the rise in fees for developers of small projects which are too big or too complex to be examined by a single inspector and currently passed onto a panel of three inspectors.

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3 HM Government, *Government response to the consultation on the review of the Nationally Significant Infrastructure Planning Regime*, 25 April 2014

4 HL Deb 18 June 2014 c839

The fee regime is set out in the *Infrastructure Planning (Fees) Regulations 2010* (SI 2010/106), as amended. There are three sets of fees to pay, the level of which is determined by the number of inspectors appointed as the examining authority. These are:

- a pre-examination fee (regulation 6);
- an "initial payment" fee based on an estimated number of days that the examining authority would have to spend examining the proposals (regulation 8); and
- a final payment based on the number of days' work actually done by the examining authority, minus the total "initial payment" (regulation 9).

The current fee levels are shown on the following page:

Number of Inspectors	Pre-examination fee (regulation 6)	Initial payment fee per estimated relevant day (regulation 8)	Final payment fee per relevant day (regulation 9)
Single inspector	£13,000	£615	£1,230
Three inspectors	£30,000	£1,340	£2,680
More than three inspectors	£43,000	£2,040	£4,080

Although the fee levels for a two inspector examining authority have not yet been set, the Impact Assessment published alongside the Bill shows the estimated benefits and costs to developers of a two person examining authority. For a developer who originally would have had their application for a DCO determined by one inspector, but would under this provision would now be determined by two inspectors, there would be an additional cost of £700-£800 per day, over the course of a six month examination period. Conversely, the estimated savings for developers where two inspectors would be required rather than three is also approximately £700-£800 per day.

Clause 24 would amend section 65 of the 2008 Act to allow for the appointment of a two person examining authority. It would also introduce a new sub-section into section 75 of the 2008 Act to make clear that if the members of a two person examining authority disagree as to its proposed decision, the view of the lead member would prevail.

2.3 Modifying development consent orders: clause 25

Clause 25 would take forward a proposal in the discussion document to simplify the process for making changes to DCOs post-consent. Its aim is to speed up the process of making non-material changes to a DCO, and to create a simplified process for material changes. It would allow, for example, the DCO to be modified so that new technology could be used in a development which was not necessarily available or envisaged when the DCO application was first made.[5]

[5] "DCLG pledges flexibility of post-permission changes", *Planning*, 2 May 2014

The current process for changing a DCO once consent has been granted is set out in the 2008 Act and the *Infrastructure Planning (Changes to, and Revocation of, Development Consent Orders) Regulations 2011* (SI 2011/2055).

Under Schedule 6 to the 2008 Act the Secretary of State has powers to make changes to, or to revoke, a DCO and to make regulations in connection with this. **Clause 25** proposes to:

- amend paragraph 2 of Schedule 6 to clarify that this regulation making power for "non-material changes" would allow the Secretary of State to dis-apply prescribed consultation requirements, where this is considered appropriate. This would mean that responsibility for publicity and consultation could be placed solely on the applicant, rather than on the Secretary of State as at present;

- make changes to paragraph 4 of Schedule 6 about "material changes" to clarify that the regulation-making power would allow the Secretary of State to "exercise a discretion" in regard to the consultation requirements which must be met. This would mean that Secretary of State could, for example, dispense with the need to hold an examination if he considered that one was not required - for example where the Secretary of State felt able to reach a decision without the need for an examination because only a very small number of representations had been received;[6] and

- make changes to paragraph 3 of Schedule 6 to ensure that the Secretary of State could refuse to modify an existing DCO where it was considered that an application for a change should be treated instead as a new application for development consent. Should this provision be enacted, the Government has said it will set out in future guidance the circumstances in which this power may be used.[7]

The Government's response to the discussion document indicated that there was widespread support for the proposed post-consent DCO modification process, and that this change should be given priority. Respondents asked the Government to produce clear guidance on what would constitute a "non-material change", as opposed to a "material change", to which the Government agreed.

In the Government's July 2014 Technical Consultation on Planning, the following criteria were proposed to judge when a change to a DCO would be non-material; if it did not involve:

- an update to the Environmental Statement (from that at the time the original DCO was made) to take account of likely significant effects on the environment;

- a need for a Habitats Regulations Assessment, or the need for a new or additional licence in respect of European Protected Species;

- compulsory acquisition of any land that was not authorised through the existing DCO.[8]

The Government's response to this part of the consultation confirmed that this and all of the other proposals in relation to making non-material changes would go ahead.[9] A revised

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6 CLG, *Infrastructure Bill: Nationally Significant Infrastructure Projects: Briefing note*, June 2014

7 HM Government, *Technical Consultation on Planning*, July 2014, para 6.43

8 ibid., para 6.10

9 HM Government, *Making changes to Development Consent Orders: government response to consultation*, November 2014

process for making changes to consents, revised Regulations and associated guidance covering the new process is expected by April 2015.[10]

In relation to making a material change, the Government confirmed in this response that it would remove the current requirement for applicants to produce a Statement of Community Consultation, but would retain a requirement for them to publicise the application in advance. The Government said it would look at the best means for the application for change to be publicised in order to make sure that these requirements were "not unduly burdensome".[11]

3 Discharge of Planning Conditions

The power to impose conditions when granting planning permission is very wide. Conditions can be used to enhance the quality of development and enable a development proposal to proceed where it would otherwise have been necessary to refuse planning permission. They can cover a wide range of issues from design and landscaping to restricting hours of operation of a business. Under the National Planning Policy Framework planning conditions should only be imposed where they are:

- necessary;
- relevant to planning and to the development to be permitted;
- enforceable;
- precise; and
- reasonable in all other respects.[12]

Further information about the application of these tests is set out in the Government's online National Planning Practice Guidance (NPPG).

Unless the planning permission states otherwise, any planning conditions run with the land as a land charge and will bind future owners. If someone no longer wishes to be bound by a planning condition then they may apply to have it removed or changed by making an application to the local planning authority (LPA) under section 73 of the *Town and Country Planning Act 1990*. Under article 30 of the *Town and Country Planning (Development Management Procedure) Order 2010* (SI 2010/2184), the LPA must give notice to the applicant of its decision within a period of eight weeks from the date the request was received, or any longer period agreed in writing between the applicant and the LPA. In the NPPG the Government makes clear that it expects LPAs to "respond to requests to discharge conditions without delay, and in any event within 21 days".[13]

In the *National Infrastructure Plan 2013* the Government said it was concerned about LPAs discharging planning conditions in a timely manner and causing delays in the delivery of development. It committed to making changes to the system so that where the LPA has

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10 HM Government, *Government response to the consultation on the review of the Nationally Significant Infrastructure Planning Regime*, 25 April 2014, p15

11 HM Government, *Making changes to Development Consent Orders: government response to consultation*, November 2014

12 HM Government, *National Planning Policy Framework*, March 2012, para 206

13 HM Government, National Planning Practice Guidance, How long should it take for a local planning authority to discharge a planning condition? Paragraph: 034, Reference ID: 21a-034-20140306

failed to approve an application to discharge a condition on time, it will be treated as approved.[14]

Clause 26 would insert a new section 74A into the 1990 Act to allow the Secretary of State to make a "development order" (an order, subject to the negative resolution procedure), relating to the deemed discharge of a planning condition. It would apply to conditions relating to development in England only. "Deemed discharge" of a condition would mean that the LPA's consent, agreement or approval to any matter as required by the condition would be deemed to have been given. It would mean that the LPA would not be able to take enforcement action and stop development on site on the basis that the scheme did not have its actual written approval.[15]

Sub-section 5 of new section 74A would provide that the Secretary of State could, in the development order, specify that the applicant for deemed discharge must first serve a notice in a prescribed form to the Secretary of State, stating their intention to rely on the deemed discharge provisions, after a certain number of weeks have elapsed from the date of the original application for approval to discharge a condition. It would also allow the Secretary of State to allow for these time periods to be varied by agreement. The Explanatory Notes to the Bill state that this would allow the applicant and the LPA to extend such periods by agreement, "which might be useful in a complex development."[16]

Subsection 9 of new section 74A would make clear that the deemed discharge provisions would only apply to conditions attached to planning permissions where the planning application for the permission was submitted after the development order comes into force. This is to ensure that the provision would not apply retrospectively.

In the Government's July 2014 Technical Consultation on Planning, it was proposed that the deemed discharge of planning conditions would not apply in relation to:

- development which is subject to an Environmental Impact Assessment;
- development which is likely to have a significant effect on a qualifying European site;
- development in areas of high flood risk (e.g. where development is in flood zones 2 & 3 or where there are reported critical drainage issues;
- conditions that have the effect of requiring that an agreement under Section 106 of the Town and Country Planning Act 1990 (as amended), Section 278 of the Highways Act 1980 to be entered into before an aspect of the development can go ahead;
- any conditions requiring the approval of details for outline planning permissions required by reserved matters.[17]

The Government's response to the Technical Consultation confirmed that the above exemptions would be put in place.[18] In response to representations received, the Government also now proposes to exempt:

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14 HM Government, *National Infrastructure Plan 2013*, December 2013, para 7.43
15 HL Bill 2−EN, June 2014, para 118
16 ibid., para 120
17 HM Government, *Technical Consultation on Planning*, July 2014, para 3.19

- Conditions relating to the investigation and remediation of contaminated land;
- Conditions relating to highway safety;
- Sites of Special Scientific Interest; and
- Conditions relating to investigation of archaeological potential.[19]

The Government confirmed that it did not consider it necessary to have exemptions for areas that are managed under other regimes, e.g. species protection, noise and some heritage assets (such as listed buildings), as "these offer a separate and effective means of protection."[20]

The technical consultation also proposed that before the deemed discharge could apply, the applicant should first serve a notice on the LPA. This would mean that the deemed discharge would not apply automatically, but only where the applicant had actively sought it. It further proposed that a notice could be served from any time after the expiry of six weeks from the day after the application to discharge the condition was received by the LPA. Approval of the application to discharge the condition would then be deemed to have been given if no decision or response from the LPA had been issued within a further two week period.[21] The response to the consultation confirmed that these proposals would be taken forward.[22]

At Committee Stage in the House of Lords, the Minister, Baroness Stowell of Beeston, responded to earlier calls for the Government to present its evidence on why this clause was needed:

> As the noble Lord, Lord McKenzie, acknowledged, this is not a new problem. In 2008, the Killian Pretty review of the planning application process undertook detailed research which found that the greatest incidence of blockages and delays in the application process was in the post-decision stage, principally delays in dealing with planning conditions and Section 106 agreements. Further research by the previous Government in 2009, which looked at 300 applications for the discharge of planning conditions, estimated that 36%—more than a third—of applications had not been determined within the statutory eight-week period and nearly a quarter took longer than 10 weeks to be determined. To answer the points made by the noble Lord, Lord McKenzie, and the noble Baroness, Lady Andrews, about the capacity of local planning offices, it is worth recognising that the evidence I have just shared with noble Lords is from five years ago. Dealing with conditions—matters of detail—is taking as long or longer than the time it takes to consider many planning applications where the principle of the development is being considered and, in many cases, the detail.
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> Current feedback from across the sector suggests that the lack of timeliness in discharging planning conditions remains a major concern. A major housebuilder recently stated that a third of its 5,000 land-bank plots are in the planning system awaiting reserved matters approval or clearance of pre-start conditions. It added that the regulatory burden involved in obtaining detailed permission and clearing conditions is the biggest constraint on the industry increasing production. Similarly, the Home Builders Federation recently reported increasing concern about conditions attached to many permissions that prevent work starting on site. The National Farmers' Union, in

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18 HM Government, *Deemed discharge of planning conditions: Government response to consultation*, November 2014, p6

19 ibid., p7

20 ibid., p7

21 op cit., *Technical Consultation on Planning*, p47-48

22 op cit., *Deemed discharge of planning conditions: Government response to consultation*, p7

> its Bill briefing, reports that conditions are currently a low priority for local authorities but often need to be cleared to meet grant or other funding agreements for new building projects. It added that delays in discharging conditions can seriously delay project delivery time.[23]

4 Comment on the proposals

The Royal Town Planning Institute (RTPI) welcomed the Bill's changes to the NSIP regime to simplify the process for making changes to DCOs. It was concerned, however, about the onus on LPAs to discharge planning conditions quickly, explaining that statutory consultees in the process would need also to be "expeditious".[24] The RTPI briefing on the Bill[25] said that "legislation may not be the best approach to deal with what is probably best described a cultural or resources issue in some LPAs." It called for clarification about "whether Clause 20 [now clause 26] includes or does not include conditions laid down by LPAs acting on behalf of statutory agencies following consultation." It also cautioned that the provision could have the unintended consequence of reducing planning approvals:

> …the widespread use of Clause 20 [now clause 26] runs the entirely foreseeable risk that LPAs will lose faith in the planning system's ability to improve unacceptable applications through conditions, and will be more reluctant to approve the more marginal applications in future. Rather than speed up the development process, one unintended and entirely undesirable consequence of Clause 20 may be a decline in approvals by LPAs.[26]

The Campaign to Protect Rural England (CPRE) briefing on the Bill called the clauses about the NSIP examining authority "technical and non-controversial". It asked for the Government to provide "greater detail" about how powers to modify post-consents DCOs would be limited in practice. The CPRE was concerned about the discharge of planning condition provisions resulting in the "loss of important safeguards" and an erosion of the power of local authorities. It again asked for the Government to provide more assurances about how this power would be used in practice.[27]

In respect of the provisions about discharge of planning conditions, the Local Government Association said that better joint working between councils and developers would be the "most effective way" of dealing with concerns about planning conditions. It stated that it was working with the Home Builders Federation, Planning Officers Society and British Property Federation to develop an approach that would "be the best way to deliver more starts on site."[28]

An article in the Local Government Lawyer called the NSIP provisions "pretty uncontroversial tweaks" and said that claims that the process of applying for a DCO would be simplified and speeded up were "a bit of an exaggeration".[29]

Planning consultancy Nathaniel Lichfield & Partners called the changes to planning law "significant" and said "when considered alongside the review of permitted development rights

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23 HL Deb, 10 July 2014, c198GC

24 RTPI, *A new infrastructure bill and plans to build more homes are announced in the Queen's Speech*, 4 June 2014

25 RTPI, *Infrastructure Bill Briefing #1*, 16 June 2014

26 ibid.

27 CPRE, *Infrastructure Bill – House of Lords Second Reading 18 June 2014*, June 2014

28 LGA, *Queen's Speech - On the Day Briefing*, 4 June 2014

29 Local Government Lawyer, *Infrastructure Bill announced in Queen's Speech*, 5 June 2014

and the new, 3-tier planning system involving far fewer planning applications, it is clear that the Government wants to continue to use planning to boost the economy and house building."[30]

Commercial law firm Bond Dickinson said that it was "disappointing", in relation to NSIPs that the opportunity had not been taken to make "more radical changes" that would be beneficial to infrastructure schemes, such as reform to the compulsory purchase and compensation regime and refinements to the DCO process for dealing with responsibility for or discharge of requirements. It said that the changes that the Bill would make "are welcome" and would "undoubtedly improve the system".[31]

5 Debate in the House of Lords

5.1 Second Reading

The Bill had its second reading debate in the House of Lords on 18 June 2014. Speaking for the Government, Transport Minister Baroness Kramer said that the planning part of the Bill showed "the Government's commitment to increasing the pace of delivery for new developments" and that it was "committed to securing investment in new nationally significant infrastructure projects as part of their efforts to rebuild the economy and create new jobs."[32]

Speaking for Labour Lord Adonis was concerned that appointing two inspectors for a NSIP examination would risk making the second inspector "distinctly second class".[33] He also asked for further evidence from Government to support the notion that it was local planning authorities which delayed the discharge of planning conditions and about what impact this measure would actually have on the level of house building.[34]

Lord Teverson for the Liberal Democrats also spoke about the discharge of planning conditions measure. He expressed concern that the Bill had "hidden implications" for affordable housing provision.[35]

5.2 Committee stage

The planning clauses of the Bill were debated during the Lords Committee stage of the Bill on 10 July 2014. These clauses were not amended during the Committee stage.

6 Debate in the House of Commons

6.1 Second reading

The Bill had its second reading in the House of Commons on 8 December 2014. Opening the debate, Transport Minister, John Hayes MP said that the small changes the Bill would make to the NSIP regime would speed up approval of projects such as the Thames tideway tunnel, road schemes and other major schemes, and would "send a clear message to investors and developers that the steps to deliver transformational projects are as simple, sensible and straightforward as possible."[36]

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30 Nathaniel Lichfield & Partners, *New Planning Rules Underpin Coalition's Last Year in Office*, 4 June 2014
31 Bond Dickinson, The Infrastructure Bill: What next for NSIPs?, June 2014
32 HL Deb 18 June 2014 c839
33 HL Deb 18 June 2014 c845
34 HL Deb 18 June 2014 c845
35 HL Deb 18 June 2014 c852
36 HC Deb 8 Dec 2014 c656

Labour shadow planning minister, Roberta Blackman-Woods MP said that the proposals to simplify nationally significant infrastructure projects were "helpful".[37] She expressed concern, however, that the provisions relating to deemed discharge of planning conditions did nothing to tackle underlying problems, relating resource constraints of local authorities and delays caused by third parties. She committed to studying the impact of these changes closely at committee stage.[38] The shadow-minister later said that she was "flummoxed" as to why there were no measures to support new garden cities in the Bill and said the Bill represented a "huge lost opportunity" for the Government to update the new towns legislation to help deliver more homes.[39]

The Parliamentary Under-Secretary of State for Communities and Local Government, (Stephen Williams MP), responded to concerns raised about the deemed discharge of planning conditions. He said this measure was a "good example" of where a small legislative change could provide "greater certainty for house builders, other planning applicants and communities." He said that it would help to ensure that local authorities "hit the deadlines that they should already be working towards."[40]

6.2 Committee stage

The planning clauses were debated in the Commons Committee stage on 6 January 2015. None of the planning clauses (clauses 23-26), were amended in Committee. On 13 January New Clause 8 (now clause 27 in the Bill), on Mayoral Development Orders was added.

Clause 23, on the earlier appointment of inspectors for Nationally Significant Infrastructure Projects (NSIPs) was agreed-to without debate.

On **Clause 24**, the appointment of two inspectors, the Shadow Planning Minister, Roberta-Blackman Woods MP asked the Minster for "enlightenment" at a "later stage" giving an indication of the criteria that would be employed when deciding on the number of panellists and about how the lead member in a two-person panel would be chosen.[41]

On **Clause 25**, changes to and revocation of development consent orders, Roberta Blackman-Woods tabled a probing amendment to seek clarification from the Minister on the safeguards that would be put in place with regard to changes made to development consent orders. In particular, for further explanation about when a change would be considered to be material or non-material and about the developer's consultation requirements.[42] In response, the Minister, Stephen Williams MP, replied that materiality was a "nebulous" concept and it would depend on the particular circumstances of a particular application. He referred to the *Government response* to the consultation on making changes to development consent orders for further information about the sorts of considerations which would be taken into account. He also set out that this clause would enable secondary legislation to be introduced later this year, and said that Government intends to provide additional guidance at the time when that legislation comes into effect. The statutory instrument would be subject to the negative resolution procedure.[43]

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37 HC Deb 8 Dec 2014 c735
38 HC Deb 8 Dec 2014 c737
39 HC Deb 8 Dec 2014 c737
40 HC Deb 8 Dec 2014 c740
41 Public Bill Committee (PBC) 6 January 2015 c121
42 PBC 6 January 2015 c121
43 PBC 6 January 2015 c125

On **Clause 26**, deemed discharge of planning conditions, Roberta Blackman-Woods tabled an amendment to limit the scope of this clause to areas where there was a local plan in place.[44] The Minister said that the Government already encouraged local authorities to get a local plan in place and expressed concern that that this amendment could have the perverse incentive of encouraging local authorities not to approve a local plan.[45] Another Opposition amendment sought to dis-apply the deemed discharge to any condition "designed to mitigate direct impacts on animal welfare, public amenity, health and wellbeing, local infrastructure".[46] The Minister replied that it was important to get "appropriate" safeguards right, but said that the broad terms used in the amendment would "severely undermine the effectiveness of this important measure."[47] Roberta Blackman-Woods asked the Minister to look again at the list of exemptions to see whether "impact on animal welfare and local services, including local infrastructure, could be added to the list of exemptions, without negating the point of the clause".[48]

New Clause on Mayoral Development Orders

New clause 8 (now clause 27), on Mayoral Development Orders was tabled by the Government, debated in Committee on 13 January 2015 and was added to the Bill. The new clause, alongside new Schedule 1 (now schedule 4 of the Bill), would give the Mayor of London the power to make mayoral development orders (MDOs) which grant planning permission for development on specified sites within Greater London in response to an application from each local planning authority in whose area any part of a site is located. Setting out the purpose of the new clause, Stephen Williams said that MDOs had the potential to help accelerate the delivery of housing and other development. He said that they would be particularly helpful in relation to complex sites that cross local authority boundaries inside Greater London. He explained that they had been "closely modelled" on existing powers that local authorities have to make local development orders.[49]

Prior to the introduction of this New Clause the Government had set out previously, in a written statement in June 2014, that it intended to give the Mayor of London new powers to make development orders in London.[50] Further information was also given in the accompanying Government press release*, London housing zones to create 50,000 new homes*, 13 June 2014.

Roberta Blackman-Woods asked for clarification about when the regulations underpinning this new power would be made and whether they would be consulted on. The Minister replied that the regulations would be "drawn up in due course" and said he was sure there would be an opportunity for people to comment on them at that time. He confirmed that the negative procedure would be used when the regulations came before Parliament.[51]

The Shadow Minister also asked for confirmation about how section 106 obligations would be applied to MDO's to support associated infrastructure and about what sort of a mix of housing MDOs would be able to provide. In particular, she asked for confirmation about how

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44 PBC 6 January 2015 c147
45 PBC 6 January 2015 c147
46 PBC 6 January 2015 c149
47 PBC 6 January 2015 c149 c153
48 PBC 6 January 2015 c149 c155
49 PBC 13 January 2015 c321
50 HC Deb 16 June 2014 c72WS
51 PBC 13 January 2015 c322

affordable housing would be delivered.[52] The Minister replied that it would be up to the London boroughs to say how many housing units they wanted and whether it would be a mixed development. Whether the development included affordable housing would depend on each borough's individual policy on affordable housing proportions.[53] Roberta Blackman-Woods replied that she would support the new clause as she wanted to see new homes delivered in London, but asked for further reassurances about how affordable housing would be delivered.[54]

In response to the Government's announcements about use of development orders on brownfield land, both in London and in the rest of England, the majority of commentators have welcomed the proposals. There has been some concern however about whether their use would mean a loss of control for local communities over the type and quality of housing that would be built on brownfield land. There have also been questions raised about they would really be an effective tool at delivering enough housing. A summary of reaction to the proposals on brownfield land policy from planning and house building professionals is available on the Planning Blog, 13 June 2014. A Guardian article, *Boris Johnson: brown fields and green elephants*, 16 June 2014 questions whether the proposed housing zones would really make a difference to the overall number of new houses needed in London. A BBC article also covers some reaction to the proposals, *Up to 50,000 London homes to be built in brownfield scheme*, 13 June 2014.

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