

Better Planning Coalition & Royal Town Planning Institute Briefing for Report Stage Levelling Up and Regeneration Bill

Below is a briefing prepared by the Better Planning Coalition (BPC) and Royal Town Planning Institute (RTPI) on the Levelling Up and Regeneration Bill ahead of the Lord's Report stage.

This briefing sets out the concerns regarding clause 88 of the Bill. We strongly support the amendment tabled by Baroness Thornhill (Amendment Paper pg. 10) which would address those concerns.

As drafted, national development management policies (NDMPs) over development **come with no minimum public consultation nor parliamentary scrutiny requirements**. It is essential that along with government assurances that consultation will be sought that there are legal safeguards introduced. Any policy safeguards can be easily changed, and therefore legal changes are absolutely necessary.

Therefore we have been supportive of an amendment to the Bill which would increase the level of scrutiny that these policies are subject to by ensuring the following:

- Require parliamentary scrutiny for the designation and review of National Development Management Policies, based on processes set out in the Planning Act 2008 (as amended) for designating National Policy Statements.
- Set minimum public consultation for the designation and review of National Development Management Policies.

We believe that these changes to the Bill will serve to improve both the quality of NDMPs in the long term while additionally ensuring full and proper public engagement with the planning system.

We would be happy to have a conversation at a time of your convenience either online, at Westminster, or alternatively we would be delighted to host you at the magnificent Hanbury Hall in your constituency.

Currently in the Bill

Part 3, Chapter 2 of the Bill concerns "Development Plans" and would:

- Introduce National Development Management Policies (NDMPs) as part of the statutory decision-making process in England (Clause 87, subsection (2) (5B));
- Require that NDMPs are given primacy in decision making where there is a conflict with local Development Plan policies (Clause 87, subsection (2) (5C)); and
- Give the Secretary of State unlimited discretion over the content of NDMPs and the nature and extent of any public consultation and parliamentary scrutiny to be undertaken (Clause 88)

These provisions were debated at Committee Stage. **We share the concerns raised by Peers about the degree of centralisation these changes represent alongside very limited requirements for consultation and parliamentary oversight of NDMPs, which risks significant changes being made to planning without the ability for the public or parliament to contribute or respond to proposals.**

The Government's consultation (<https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy>) set out the rationale for NDMPs and what their scope could be, for example "existing policies aimed at decision-making already provided within the National Planning Policy Framework". They have also sought to clarify the relationship between NDMPs and locally produced plans and have highlighted that the Bill's proposals represent a shift from the current position of Development Plans being the primary decision-making document, to one which cannot duplicate NDMPs and where centrally generated policies will take precedence over local ones:

"The Bill would preclude new plans from including policies which duplicate or are inconsistent with National Development Management Policies. This would ensure that there is a clear demarcation between locally prepared plans and national policy, minimising any risk of conflict between them.

The Bill also provides that National Development Management Policies would take precedence where there is conflict between them and development plan policies when making a decision on a planning application."

The consultation confirms that NDMPs will, in the future, have "a prominent role in making decision of planning applications..." At Committee responding to the BPC/RTPI's proposals the Minister said "National policy statements are used to set out the policy for nationally significant infrastructure projects—planning decisions that are made by Ministers. National development management policies will serve a broader purpose than this and will sit alongside policies in locally produced plans when local decision-makers consider the suitability of development proposals... Clause 87 already imposes an obligation on the Secretary of State to ensure that consultation and participation take place as appropriate, and our recent consultation on the future of the NPPF and the NDMP confirms that public consultation will be carried out before they are designated." **The BPC/RTPI does not believe the Minister's response adequately addresses our concerns** for the following reasons:

- NDMPs will be used in Ministerial decision making as they will form the basis for any called-in decisions going forward, alongside development plan policies. They therefore will be used by Ministers in the same way as NPPFs.
- There is no commitment for parliamentary scrutiny for what will become national planning policy which will be used in national decision making.
- There should be an absolute commitment to public and parliamentary scrutiny rather than it being left to the discretion of the Secretary of State as with the current clause's inclusion of "as appropriate".
- Local decision-makers will be required to consider NDMPs in planning applications without any obligation on the Secretary of State to take their views into account when developing them.

Given this shift in emphasis on how policy for decision making will be developed and produced, we are concerned that the powers for the Secretary of State to determine the level of public involvement in the production of these policies, and make these policies without any parliamentary oversight or approval, would enable future Secretaries of State to make substantial changes to planning policy that have significant effects at a local level, with extremely limited public or parliamentary scrutiny. This is a significant shift towards centralisation of planning and these powers are significantly broader and more permissive than those Ministers have in connection with other areas of planning - notably National Policy Statements. We're therefore **asking Peers to protect the right of the public and parliament to have a say in planning policy** and support our proposal to align these powers with those existing processes.

We're asking Peers to support the amendment to Clause 88 as tabled by Lib Dem peer Baroness Thornhill (pg 10). The amendment would:

- **Require parliamentary scrutiny for the designation and review of National Development Management Policies, based on processes set out in the Planning Act 2008 (as amended) for designating National Policy Statements.**
- **Set minimum public consultation for the designation and review of National Development Management Policies.**

Local authorities are rightly required to consult on policies when preparing local plans today. In future **it is right that Secretaries of State be held to account by the public and parliament** in a similar way. As with National Policy Statements, **the BPC/RTPI ask that parliament be required to scrutinise NDMPs and that the public be consulted on their content and on proposed changes** to them. It is considered that with the unprecedented level of central control for planning they introduce safeguards are needed to maintain local consent. **Passing these reforms without improving the process by which they are created would undermine Government's stated aim** by reducing local consent to key aspects of planning policy, excluding communities from having a say in how applications are assessed, and mark a distinct shift away from the current open and collaborative approach to national policy development that we have seen since the NPPF.

Amendment

Below is the amendment as tabled by Baroness Thornhill. This amendment stipulates the process for the Secretary of State to designate and review a national development management policy including minimum public consultation requirements and a process of parliamentary scrutiny based on processes set out in the Planning Act 2008 (as amended) for designating National Policy Statements.

Clause 87, Page 95, line 9, leave out lines 9 to 16 and insert—

“(2) Before designating a policy as a national development management policy for the purposes of this Act the Secretary of State must carry out an appraisal of the sustainability of that policy.

(3) A policy may be designated as a national development management policy for the purposes of this Act only if the consultation and publicity requirements set out in clause 38ZB, and the parliamentary requirements set out in clause 38ZC, have been complied with in relation to it, and—

(a) the consideration period for the policy has expired without the House of Commons resolving during that period that the statement should not be proceeded with, or

(b) the policy has been approved by resolution of the House of Commons—

(i) after being laid before Parliament under section 38ZC, and

(ii) before the end of the consideration period.

(4) In subsection (3) “the consideration period”, in relation to a policy, means the period of 21 sitting days beginning with the first sitting day after the day on which the statement is laid before Parliament under section 38ZC, and here “sitting day” means a day on which the House of Commons sits.

(5) A policy may not be designated a national development management policy unless—

- (a) it contains explanations of the reasons for the policy, and
 - (b) in particular, includes an explanation of how the policy set out takes account of Government policy relating to the mitigation of, and adaptation to, climate change.
- (6) The Secretary of State must arrange for the publication of a national policy statement.

38ZB Consultation and publicity

- (1) This section sets out the consultation and publicity requirements referred to in sections 38ZA(3) and 38ZD(7).
- (2) The Secretary of State must carry out such consultation, and arrange for such publicity, as the Secretary of State thinks appropriate in relation to the proposal. This is subject to subsections (4) and (5).
- (3) In this section “the proposal” means—
- (a) the policy that the Secretary of State proposes to designate as a national development management policy for the purposes of this Act or
 - (b) (as the case may be) the proposed amendment (see section 38ZD).
- (4) The Secretary of State must consult such persons, and such descriptions of persons, as may be prescribed.
- (5) If the policy set out in the proposal identifies one or more locations as suitable (or potentially suitable) for a specified description of development, the Secretary of State must ensure that appropriate steps are taken to publicise the proposal.
- (6) The Secretary of State must have regard to the responses to the consultation and publicity in deciding whether to proceed with the proposal.

38ZC Parliamentary requirements

- (1) This section sets out the parliamentary requirements referred to in sections 38ZA(3) and 38ZD(7).
- (2) The Secretary of State must lay the proposal before Parliament.
- (3) In this section “the proposal” means—
- (a) the policy that the Secretary of State proposes to designate as a national development management policy for the purposes of this Act or
 - (b) (as the case may be) the proposed amendment (see section 38ZD).
- (4) Subsection (5) applies if, during the relevant period—
- (a) either House of Parliament makes a resolution with regard to the proposal, or
 - (b) a committee of either House of Parliament makes recommendations with regard to the proposal.
- (5) The Secretary of State must lay before Parliament a statement setting out the Secretary of State's response to the resolution or recommendations.
- (6) The relevant period is the period specified by the Secretary of State in relation to the proposal.

(7) The Secretary of State must specify the relevant period in relation to the proposal on or before the day on which the proposal is laid before Parliament under subsection (2).

(8) After the end of the relevant period, but not before the Secretary of State complies with subsection (5) if it applies, the Secretary of State must lay the proposal before Parliament.

38ZD Review of national development management policies

(1) The Secretary of State must review a national development management policy whenever the Secretary of State thinks it appropriate to do so.

(2) A review may relate to all or part of a national development management policy.

(3) In deciding when to review a national development management policy the Secretary of State must consider whether—

(a) since the time when the policy was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the statement was decided,

(b) the change was not anticipated at that time, and

(c) if the change had been anticipated at that time, any of the policy set out would have been materially different.

(4) In deciding when to review part of a national development management policy (“the relevant part”) the Secretary of State must consider whether—

(a) since the time when the relevant part was first published or (if later) last reviewed, there has been a significant change in any circumstances on the basis of which any of the policy set out in the relevant part was decided,

(b) the change was not anticipated at that time, and

(c) if the change had been anticipated at that time, any of the policy set out in the relevant part would have been materially different.

(5) After completing a review of all or part of a national development management policy the Secretary of State must do one of the following—

(a) amend the policy;

(b) withdraw the policy's designation as a national development management policy;

(c) leave the policy as it is.

(6) Before amending a national development management policy the Secretary of State must carry out an appraisal of the sustainability of the policy set out in the proposed amendment.

(7) The Secretary of State may amend a national development management policy only if the consultation and publicity requirements set out in section 38ZB, and the parliamentary requirements set out in section 38ZC, have been complied with in relation to the proposed amendment, and—

(a) the consideration period for the amendment has expired without the House of Commons resolving during that period that the amendment should not be proceeded with, or

(b) the amendment has been approved by resolution of the House of Commons—



(i) after being laid before Parliament under section 38ZA, and

(ii) before the end of the consideration period.

(8) In subsection (7) “the consideration period”, in relation to an amendment, means the period of 21 sitting days beginning with the first sitting day after the day on which the amendment is laid before Parliament, and here “sitting day” means a day on which the House of Commons sits.

(9) If the Secretary of State amends a national development management policy, the Secretary of State must—

(a) arrange for the amendment, or the policy as amended, to be published, and

(b) lay the amendment, or the policy as amended, before Parliament.”

About The Better Planning Coalition

The Better Planning Coalition represents 34 organisations across the environment, housing, planning, heritage and transport sectors with one common goal: a planning system fit for climate, nature and people.

This broad range of organisations formed the Better Planning Coalition to campaign for the biggest upgrade to planning rules for at least a generation and are working together to influence the Levelling Up and Regeneration Bill and the forthcoming review of the National Planning Policy Framework (NPPF).



About the Royal Town Planning Institute

The Royal Town Planning Institute (RTPI) champions the power of planning to create sustainable, prosperous places and vibrant communities. As a professional body, the RTPI has over 27,000 members across the public and private sector and is responsible for setting formal standards for planning practice and education. As a learned society, the RTPI uses its expertise and research to bring evidence and thought leadership to shape planning policies and thinking.

