These Notes refer to Lords Amendments to the Growth and Infrastructure Bill as brought from the House of Lords on 26 March 2013 [Bill 157]

GROWTH AND INFRASTRUCTURE BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Growth and Infrastructure Bill, as brought from the House of Lords on 26 March 2013. They have been prepared by the Department for Communities and Local Government, the Department for Business, Innovation and Skills, the Department for Culture, Media and Sport, the Department of Energy and Climate Change and the Department for Environment, Food and Rural Affairs in order to assist the reader of the Bill and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.

2. These notes, like the Lords Amendments themselves, refer to HL Bill 72, the Bill as first printed for the Lords.

3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.

4. All of the Lords Amendments were in the name of the Minister except for Amendments 16 and 17, which were supported by the Government, and Amendments 7 and 25 which were opposed by the Government.

COMMENTARY ON LORDS AMENDMENTS

Lords Amendment 1

5 Lords Amendment 1 would amend section 62A of the Town and Country Planning Act 1990 (inserted by Clause 1 of the Bill) to provide that an application may be made directly to the Secretary of State under the new section 62A only if the development to which the application relates is 'major development'. 'Major development' means development of a description to be prescribed by the Secretary of State in secondary legislation.

Lords Amendments 2, 3, 4, 5 and 28

6. Lords Amendment 2 would insert a new provision, section 62B, into the Town and Country Planning Act 1990 setting out the conditions that must be satisfied before a local planning authority may be designated (or a designation revoked) for the purposes of section 62A of the Town and Country Planning Act 1990. The conditions are that, by reference to published criteria, the Secretary of State considers that there are respects in which an authority are not adequately performing their function of determining applications under Part 3 of the Town and Country Planning Act 1990. Section 62B would also provide that the criteria must be contained in a document which has been laid before both Houses of Parliament and has not been rejected by a vote in either House during the period of forty sitting days after laying. Lords Amendments 3, 4 and 5 would make minor changes to Clause 1 which are consequential on Amendments 1 and 2. Lords Amendment 28 would bring clause 1(1), so far as it inserts new section 62B, into force on Royal Assent.

Lords Amendments 6 and 34

7. Lords Amendment 6 would insert a new provision, section 62C, into the Town and Country Planning Act 1990 imposing a duty on the Secretary of State to notify a parish council of any applications submitted directly to the Secretary of State that relate to land in their parish, but only where the parish council has asked the relevant local planning authority to notify the parish council of applications submitted to that authority. It would also require a designated planning authority, if requested by the Secretary of State, to let the Secretary of State know which parish councils have asked to be notified in this way. Lords Amendment 34 would make a minor change to Schedule 1 which is consequential on Amendment 6.

Lords Amendment 7

8. Lords Amendment 7 would amend section 61 of the Town and Country Planning Act 1990 to enable local planning authorities to limit the operation of new national permitted development rights created by the Secretary of State for the benefit of householders. Permitted development rights grant planning permission for specified development without the need for a planning application. They are given effect by the Secretary of State making a development order which is subject to negative parliamentary procedure. The amendment would enable local planning authorities to disapply in their area any new permitted development right relating to development within the curtilage of a dwelling house.

Lords Amendment 8

9. Lords Amendment 8 would remove the powers in England for the Secretary of State to intervene in the making of local development orders and would also remove the requirement for local planning authorities in England to report on the operation of local development orders. Amendment 8 would also introduce a requirement that where a local planning authority in England adopts a local development order they must submit a copy of the order to the Secretary of State after the order is adopted.

10. Amendment 8 would do this by amending section 61B(1) to (7) of the Town and Country Planning Act 1990 so that they cease to have effect in England. This would remove the powers for the Secretary of State to direct that a local development order be submitted for approval before adoption, to reject an order or part of an order, and to direct that a local development order be modified before it is adopted. Amendment 8 would also insert a new section 61B(7A) which requires a local planning authority in England to submit a copy of a local development order to the Secretary of State after the order is adopted.

11. Amendment 8 would also remove the Secretary of State's power, under Schedule 4A to the 1990 Act, to prescribe a procedure for submitting local development orders for approval and would replace it with a power to prescribe a procedure for submitting orders to the Secretary of State after adoption. Schedule 4A would be further amended to remove the requirement for a local planning authority to report on the extent to which a local development order is achieving its purpose.

Lords Amendments 9, 10, 11 and 13

12. Lords Amendments 9, 10 and 13 would introduce a duty for London Boroughs to consult the Mayor of London in relation to certain applications made under section 106BA of the Town and Country Planning Act 1990 (which is inserted by Clause 6 of the Bill). Amendments 9 and 10 would insert section 106BA(8)(b), so that the authority dealing with an application to which new section 106BAA applies (see Amendment 13) must have regard to any representations made by the Mayor. As a result of section 106BB(6), this also applies to the Secretary of State when determining an appeal under section 106BB (also inserted by Clause 6 of the Bill).

13. Lords Amendment 13 would insert section 106BAA into the 1990 Act imposing a duty to inform the Mayor of certain applications made under section 106BA. The duty applies to applications relating to developments that section 2A of the Town and Country Planning Act 1990 applied to (applications of potential strategic importance relating to land in Greater London). The duty will not apply if the Mayor determined the relevant application for planning permission (in which case the application under section 106BA would be made to the Mayor), or was not consulted about it in accordance with a development order. The current requirement to consult the Mayor in relation to applications for planning permission is contained in article 5 of the Town and Country Planning (Mayor of London) Order 2008 (S.I. 2008/580). Under section 106BAA(3) the Mayor must notify the Borough within 7 days as to whether the Mayor wishes to make representations and under section 106BAA(4) must make those representations within 14 days. Together with Lords Amendment 11, section 106BAA(5) extends the default period for notifying the applicant of the outcome of the application under section 106BA(9)(b) to 35 days in relation to these applications.

Lords Amendment 12

14. Lords Amendment 12 would insert subsection (11A) into section 106BA of the Town and Country Planning Act 1990 (inserted by Clause 6 of the Bill). This subsection prevents applications and appeals being made under sections 106BA

and 106BB of the 1990 Act in relation to developments which were granted permission on the basis of a rural exception sites policy.

Lords Amendments 14, 26, 27, 35 and 36

15. Lords Amendment 14 would amend Clause 6 of the Bill by substituting new subsections (4) to (6) for subsections (4) and (5). The effect is to replace the power to repeal the sections inserted by Clause 6 with an actual repeal of those sections as from the end of 30th April 2016. It would also give the Secretary of State power to amend this date, and to make transitional provision. Lords Amendments 26 and 27 would amend Clause 28 (orders) so that an order amending the date is subject to the affirmative procedure, and an order making transitional provision is subject to no parliamentary procedure.

16. Lords Amendments 35 and 36 are minor drafting amendments to paragraph 9 of Schedule 2 to the Bill. They would renumber an existing amendment to Schedule 6 to the Town and Country Planning Act 1990.

Lords Amendment 15

17. Lords Amendment 15 would substitute new provision in place of subsections (2) to (8) of Clause 8 of the Bill. Those subsections disapply, until 6 April 2018, certain duties with which the Secretary of State would otherwise have to comply when exercising the power in section 109 of the Communications Act 2003 to make regulations (conditions and restrictions on application of electronic communications code). Those duties relate to having regard to preserving protected areas in England and Wales, Scotland and Northern Ireland. They relate to national parks, conservation and amenity lands, the Norfolk and Suffolk Broads and areas of outstanding natural beauty.

18. Lords Amendment 15 would replace those subsections with new provisions so that in complying with section 109(2)(b) of the Communications Act 2003 the Secretary of State is deemed to have complied with those other duties. Section 109(2)(b) contains a duty for the Secretary of State to have regard to the need to protect the environment and, in particular, to conserve the natural beauty and amenity of the countryside.

Lords Amendments 16 and 17

19. Lords Amendment 16 would insert a new Clause related to town and village greens. The new Clause would amend section 15(3)(c) of the Commons Act 2006. The effect of the amendment is to reduce the period within which a town and village green application can be made (after the requisite 20 years of recreational use as of right has ceased) from two years to one year. This amendment makes changes in relation to land in England only and restates the current law as it applies in Wales.

20. Lords Amendment 17 would make a consequential amendment of Clause 14 as a result of Lords Amendment 16.

Lords Amendments 18, 29 to 32 and 37 to 40

21. Clause 14 of the Bill inserts a new section 15C into the Commons Act 2006. This restricts the right to apply for registration of land as a town or village green under section 15(1) of the 2006 Act where any of a number of "trigger" events (set out in a new Schedule 1A to that Act) have occurred in respect of that land. The right will again apply where a corresponding "terminating" event occurs. Section 15C(5) provides power for the Secretary of State to add, amend or omit the trigger or terminating events set out in Schedule 1A. Lords Amendment 18 would amend the Commons Act 2006 so that orders made under the power contained in the new section 15C(5) of that Act are subject to the affirmative parliamentary procedure.

22. Lords Amendments 29 to 32 would bring forward commencement of Clause 14 of the Bill and Schedule 4 to the Bill, which provide for restrictions on the right under section 15(1) of the Commons Act 2006 to apply for registration of land as a town or village green, so that they come into force on Royal Assent rather than two months after that date.

23. Lords Amendments 37 to 40 would make minor and technical changes to the "trigger" and "terminating" events set out in Schedule 4 to the Bill which determine whether the right to apply for registration of land as a town or village green under section 15(1) of the Commons Act 2006 is exercisable. The changes would replace an incorrect statutory reference, in respect of the trigger event relating to neighbourhood development plan proposals, to section 38A(7) of the Planning and Compulsory Purchase Act 2004 with the correct reference, which is to paragraph 4(1) of Schedule 4B of the Town and Country Planning Act 1990 as applied by section 38A of the Planning and Compulsory Purchase Act 2004. The Amendments would also provide that the trigger event refers expressly to publication of such a proposal by a local planning authority. These changes will ensure that the trigger event in respect of neighbourhood development plan proposals will be publication by the local planning authority.

Lords Amendment 19

24. Lords Amendment 19 would amend Clause 20. Clause 20 inserts a new section 237A into the Planning Act 2008 to make provision about pre-Planning Act consents for major infrastructure projects (here referred to as "section 33 consents", after the section of the Planning Act where they are listed) which were originally applied for before 1 March 2010. The new section 237A provides that where such section 33 consents are varied or replaced, the section 33 consents as varied or replaced are sufficient in themselves to authorise the development to which they refer and no development consent order under the Planning Act is required – regardless of the date of any such application for variation or replacement. (Without the new section, it was at best unclear whether a development consent order would be required in addition to or instead of the varied or replaced section 33 consent in those cases where the variation or replacement was applied for on or after 1 March 2010.)

25. Clause 20 was added to the Bill at Commons Report stage. However, it was

subsequently pointed out that the way that the proposed new section 237A had been drafted potentially significantly limited its effectiveness in certain cases: if the original section 33 consent had not been implemented before being varied or replaced, the new section worked perfectly well, but if the original consent had been wholly or partly implemented, undesirable consequences could arise. The problem with the Clause as it stood was that the only development permitted by a varied or replaced section 33 consent was "the remaining development" – i.e. that which had not already been carried out. This limited the effectiveness of the Clause in a way that was not intended. Lords Amendment 19 would remove this limitation and incidentally simplify the drafting of the new section by replacing its former subsections (3) to (5) with a single subsection.

Lords Amendments 20 to 22

26. Lords Amendments 20 and 21 would clarify that an order granting development consent made under section 114 of the Planning Act 2008 will be subject to Special Parliamentary Procedure if this is required by either section 130 of that Act (where the order authorises acquisition of land held inalienably by the National Trust), or section 131 or 132 (where the order authorises the acquisition of land, or rights over land, forming part of a common, open space or fuel or field garden allotment). This would ensure that where a development consent order authorises acquisition of land held inalienably by the National Trust, and the Trust has made a representation containing an objection to such acquisition which it has not withdrawn, the order would still be subject to Special Parliamentary Procedure under section 130 whether or not this is also required under section 131 or 132 as a result of the land concerned forming part of a common, open space or a fuel or field garden allotment. It also ensure that if an order would be subject to Special Parliamentary Procedure as a result of section 131 or 132 of the 2008 Act because it authorises the acquisition of land, or rights over land, which forms part of a common, open space or fuel or field garden allotment, then the order would still be subject to Special Parliamentary Procedure whether or not this is also required under section 131 relating to National Trust land.

27. Clause 23 modifies the application of special parliamentary procedure where this is required in respect of orders authorising the acquisition of land under:

(a) section 130, 131 or 132 of the Planning 2008 Act (development consent orders);

(b) section 17, 18 or 19 of the Acquisition of Land Act 1981 (compulsory purchase orders);

(c) paragraph 22 of Schedule 3 to the Harbours Act 1964 (harbour revision or empowerment order);

(d) paragraph 12 or 13 of Schedule 4 to the New Towns Act 1981 (orders under that Act); and

(e) section 12 of the Transport and Works Act 1992 (orders under that Act).

28. Lords Amendment 22 would clarify that Clause 23 applies to any development consent order made under the Planning Act 2008 after commencement. This would include orders made on applications for development consent made before commencement of Clause 23. The Amendment would remove references to other orders authorising compulsory purchase of land, as it is not the intention to apply the modifications in respect of such other orders where proceedings have begun prior to commencement. It would achieve this by removing references to other compulsory purchase orders in subsection (10) of Clause 23.

Lords Amendment 23

29. Lords Amendment 23 would add new subsections (2A) and (2B) to section 144 of the Planning Act 2008 and remove subsection (3) from that section. Section 144 deals with development consent orders for nationally significant highways projects under the Planning Act 2008. The new subsections clarify that subsection (2) only applies to provisions of such orders that authorise the charging of tolls and not to provisions that authorise other road user charges. The removal of subsection (3) deletes an existing limitation on the ability of development consent orders under the Planning Act 2008 to provide for the transfer and appropriation of roads.

Lords Amendments 24 and 33

30. Lords Amendment 24 would insert a new Clause into the Bill, the effect of which would be to insert two new subsections into section 38 of the Greater London Authority Act 1999. These new subsections would give the Mayor of London the power to delegate decisions on whether to 'call in' applications of potential strategic importance for determination by the Mayor; and similarly to delegate decisions on whether to grant permission in cases where an application has been called in. The new subsections would limit the persons to whom such decisions may be delegated to the Deputy Mayor and to members of staff of the Greater London Authority who are appointed under section 67(1) of the 1999 Act (these are the Mayor's personal appointments of up to two political advisers and up to ten other members of staff (in practice most of these posts are occupied by the various deputy mayors)). Lords Amendment 33 would make a minor change to Schedule 1 to the Bill consequential on Amendment 24.

Lords Amendment 25

31. Lords Amendment 25 would remove Clause 27 from the Bill. Clause 27 creates a new, voluntary employment status of 'employee shareholder' where individuals accept alternative employment terms and conditions and become entitled to shares worth at least £2000 in the company for which they work or in that company's parent company.

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