

# NEIGHBOURHOOD PLANNING BILL

## EXPLANATORY NOTES ON LORDS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Lords amendments to the Neighbourhood Planning Bill as brought from the House of Lords on 15 March 2017.
- 2 These Explanatory Notes have been prepared by the Department for Communities and Local Government in order to assist the reader of the Bill and to help inform debate on the amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Lords amendments themselves, refer to HL Bill 86, the Bill as first printed for the Lords.
- 4 These Explanatory 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 Lords amendments.
- 5 All Lords amendments apart from Amendments 12, 22 and 23 were tabled in the name of the Minister (Lord Bourne of Aberystwyth).
- 6 Lords Amendment 12 was tabled by Lord Stunell, and was opposed by the Government. Lords Amendment 22 was tabled by Lord Kennedy of Southwark, and was also opposed by the Government.
- 7 Lords Amendment 23 was tabled by Lord Taylor of Goss Moor and Lord Best, and was supported by the Government.
- 8 In the following Commentary, an asterisk(\*) appears in the heading of any paragraph that deals with a non-Government amendment.

### Commentary on Lords amendments

#### ***PART ONE: PLANNING*** ***Neighbourhood Planning***

#### **Lords Amendments to Clause 1**

##### Lords Amendments 1, 2 and 3

- 9 Lords Amendments 1, 2 and 3 would clarify the definition of a ‘post-examination’ neighbourhood development plan. This would ensure that the definition applied to those plans which progress through the new procedure for examining proposals for the modification of a neighbourhood development plan (as set out in clause 3 of, and Schedule 1 to, the Bill); continued to apply from the point a decision is taken that a referendum(s) is to be

held on a neighbourhood development plan; and, where the plan is approved at a referendum(s), up until that plan becomes part of the statutory development plan.

- 10 The amendments would also ensure that it is clear to decision makers that where a neighbourhood development plan is not approved at a referendum(s), or where a plan is subsequently not made by a local planning authority, they do not need to have regard to it.

## **Lords Amendment (New Clause) after Clause 1**

### **Lords Amendment 4**

- 11 Lords Amendment 4 would amend Schedule 1 to the Town and Country Planning Act 1990 to require a local planning authority, or the Secretary of State, to notify any parish council or designated neighbourhood forum of any future planning applications or alterations to planning applications in their area. This requirement would apply when there is a neighbourhood development plan which forms part of the statutory development plan, or when there is a 'post-examination' neighbourhood development plan, for a neighbourhood area, all or part of which falls within the authority's area. The requirement does not apply where the parish council or designated neighbourhood forum has given notification in writing that they do not wish to be notified of any such application.
- 12 This clause would extend to England and Wales and apply to England only.

## **Lords Amendment (New Clause) after Clause 5**

### **Lords Amendment 5**

- 13 Lords Amendment 5 relates to the procedure for examining a neighbourhood development order as set out in Schedule 4B to the Town and Country Planning Act 1990 and applied to neighbourhood development plans by section 38C of the Planning and Compulsory Purchase Act 2004, in accordance with section 38A(3) of that Act.
- 14 The amendment would add to the existing non-exhaustive list (set out in paragraph 11 of Schedule 4B) of matters that Regulations on the procedure for the examination of neighbourhood development orders and neighbourhood development plans may address.
- 15 The amendment would provide for Regulations to set out the requirements for the person appointed to examine a neighbourhood development order or plan to follow during the examination process. For example, Regulations may require examiners to provide information to, and to hold meetings with, a qualifying body, local planning authority and others, and for the examiner to publish draft recommendations.
- 16 This clause would extend to England and Wales and apply to England only.

## ***Local Development Documents***

### **Lords Amendments to Clause 6**

#### **Lords Amendment 6**

- 17 Lords Amendment 6 would amend section 34 of the Planning and Compulsory Purchase Act

2004 to require the Secretary of State to produce guidance for local planning authorities about how their local development documents, taken as a whole, should address the housing needs of older and disabled people. Local planning authorities must have regard to this guidance when discharging their plan-making responsibilities.

## **Lords Amendments to Clause 11**

### **Lords Amendments 7, 8 and 9**

- 18 Lords Amendments 7, 8 and 9 would allow the Secretary of State to produce Regulations which prescribe matters which local planning authorities must address in their Statements of Community Involvement.

## ***Planning Conditions***

## **Lords Amendments to Clause 12**

### **Lords Amendments 10, 11, 13, 15, 16, 17, 19 and 20**

- 19 These Lords Amendments would mean that the Secretary of State's power in subsection (1) of section 100ZA of the Town and Country Planning Act 1990 (inserted by clause 12) could be exercised only in respect of a relevant grant of planning permission. Such a grant would be defined as a grant of permission to develop land which is granted on an application made under Part 3 of the Town and Country Planning Act 1990. As a result, section 100ZA would not apply to planning permission granted by a development order, including a local, Mayoral or neighbourhood development order.

### **Lords Amendment 12\***

- 20 Lords Amendment 12 would have the effect of restricting the Secretary of State's power in subsection (1); the power could not be used to prevent a local planning authority from imposing a condition on a planning permission that was in conformity with the National Planning Policy Framework.

### **Lords Amendment 14**

- 21 Lords Amendment 14 would introduce a new provision into section 100ZA which would require the Secretary of State to consult before making Regulations under subsection(6) (to prescribe circumstances in which the requirement under subsection (5) to seek the applicant's written agreement to a pre-commencement condition does not apply).

### **Lords Amendment 18**

- 22 Lords Amendment 18 would impose a duty on the Secretary of State to issue guidance (new subsection (8A)) to local planning authorities about section 100ZA and Regulations made under that section, and would allow the Secretary of State to amend that guidance as required (new subsection (8B)). The guidance may, for example, be about the procedure for seeking the written agreement of the applicant, as required by subsection (5) of section 100ZA, in advance of granting planning permission subject to a pre-commencement condition. The manner of publication would be a matter for the Secretary of State (new subsection (8C)).

### **Lords Amendment 21**

- 23 Lords Amendment 21 would provide that any Regulations under subsection (1), which prescribe what kinds of conditions may or may not be imposed on a grant of planning

permission, and in what circumstances, would be subject to the affirmative, rather than the negative, resolution procedure.

## ***Change of use of drinking establishments***

### **Lords Amendment (New Clause) after Clause 12\***

#### **Lords Amendment 22\***

- 24 Lords Amendment 22 would amend the Town and Country Planning (Use Classes) Order 1987 by making a drinking establishment (public house, wine-bar or other drinking establishment) 'sui generis' i.e. not in a use class.
- 25 This amendment would also require, before the Bill is enacted, the removal by statutory instrument of the permitted development rights for the change of use or demolition of drinking establishments.
- 26 This clause would extend and apply to England and Wales.

## ***New Towns***

### **Lords Amendment (New Clause) after Clause 12\***

#### **Lords amendment 23\***

- 27 Lords Amendment 23 would enable the Secretary of State to transfer oversight of New Town Development Corporations established under the New Towns Act 1981, to one or more local authorities covering the designated area for the new town. It provides a power to make Regulations prescribing the transfer of functions under the Act from central government to the local authorities and other changes to the Act to enable this to work in practice.
- 28 This clause would extend to England and Wales and apply to England only.

## ***Part 2: COMPULSORY PURCHASE ETC*** ***Compulsory Purchase***

### **Lords Amendments to Clause 14**

#### **Lords Amendments 24 to 28**

- 29 Lords Amendments 24 to 28 would remove the requirement that temporary possession must be linked to a scheme for the acquisition of other land, either by compulsion or agreement.

### **Lords Amendments to Clause 15**

#### **Lords Amendments 29 to 38**

- 30 Lords Amendment 29 would substitute subsection (2) of clause 15 to clarify that temporary possession must be authorised by the same type of instrument as would have been used if the land in question was to have been compulsorily acquired for the same purposes as temporary

possession is needed.

- 31 Lords Amendments 30 to 32 would amend clause 15(3) to clarify that the same land may be subject to both temporary possession and compulsory acquisition powers concurrently.
- 32 Lords Amendment 33 would provide that an order authorising temporary possession of land is not to be subject to Special Parliamentary Procedure unless that land is held by the National Trust inalienably.
- 33 Lords Amendment 34 would qualify subsection (3)(c) of clause 15 to provide that the procedure for obtaining temporary possession of land must be the same as the procedure for acquiring land by compulsion unless the acquiring authority only has a power to acquire rights over land rather than acquire land. If that is the case, then the procedure would be the procedure for acquiring a right over land.
- 34 Lords Amendments 35 to 38 would be consequential upon Lords Amendment 24 by removing redundant provisions.

## **Lords Amendment to Clause 16**

### **Lords Amendment 39**

- 35 Lords Amendment 39 would provide that the time limits for exercising powers of temporary possession are three years for temporary possession authorised by a compulsory purchase order or five years for temporary possession authorised by any other type of order.

## **Lords Amendments to Clause 19**

### **Lords Amendments 40 to 48**

- 36 Lords Amendment 40 would provide for the payment of compensation to a “beneficial claimant” for any loss or injury they suffer where a relevant right or interest annexed to land belonging to them has been interfered with or a restrictive covenant has been breached by an acquiring authority as a result of the temporary possession of land. Lords Amendment 44 would be consequential upon Amendment 40.
- 37 Lords Amendment 41 would omit subsection (3), such that the value of a leasehold interest in the land for the period of temporary possession would no longer be taken into account when assessing compensation for temporary possession. Lords Amendment 42 would be consequential upon Lords Amendment 41 by omitting subsection (4).
- 38 Lords Amendments 43, 45 and 46 would provide that the start of the statutory six-year time limit for submitting a claim for compensation runs from the end of the temporary possession period rather than the start.
- 39 Lords Amendment 47 would provide that interest on outstanding compensation is payable in relation to each individual head of claim from the day after the last day on which that particular loss or injury occurs.
- 40 Lords Amendment 48 would define the term “relevant right or interest” first used in Amendment 40.

## **Lords Amendments to Clause 20**

### **Lords Amendments 49 and 50**

- 41 Lords Amendment 49 would provide that “beneficial claimants” would be able to claim an advance payment of compensation as well as “claimants” (those with an interest in or a right to occupy the land). Lords Amendment 50 would be consequential upon Lords Amendment 49.

## **Lords Amendments to Clause 23**

### **Lords Amendments 51 and 52**

- 42 Lords Amendment 51 would provide that the acquiring authority may use land taken for temporary possession even though it would interfere with a relevant right or interest or a restrictive covenant.
- 43 Lords Amendment 52 would prevent interference with any relevant right or interest or restrictive covenant benefitting land held inalienably by the National Trust, protected rights of statutory undertakers and Electronic Communication Code operators.

## **Lords Amendment (New Clause) after Clause 23**

### **Lords Amendment 53**

- 44 Lords Amendment 53 would provide that, where an acquiring authority takes temporary possession of land subject to a tenancy, the terms and obligations of the tenancy, with the exception of the payment of rent and the length of the tenancy, would be disapplied to the extent that the temporary possession prevented reasonable compliance with them.
- 45 This clause would extend and apply to England and Wales.

## **Lords Amendments to Clause 24**

### **Lords Amendments 54 to 59**

- 46 Lords Amendment 54 would place an obligation on the Secretary of State and Welsh Ministers to make Regulations providing for the reinstatement of the temporary possession land and for the resolution of disputes about reinstatement by an independent person. Lords Amendment 58 would be in consequence of Amendment 54.
- 47 Lords Amendment 55 would enable the Secretary of State to exclude, by Regulations, the application of any provision of Chapter 1 (Temporary Possession of Land) in relation to acquiring authorities under the stated provisions of the Pipe-lines Act 1962, the Gas Acts 1965 and 1986 and the Electricity Act 1989.
- 48 Lords Amendment 56 would omit the general power to make Regulations to exclude or modify provisions of Chapter 1 in relation to particular cases or types of case.
- 49 Lords Amendment 57 would enable the Secretary of State or the Welsh Ministers to modify a provision of Chapter 1 to make it effective in relation to particular cases or types of case.
- 50 Lords Amendment 59 would provide that the Secretary of State or the Welsh Ministers must carry out a public consultation before making Regulations under this section.

## **Lords Amendments to Clause 25**

### **Lords Amendments 60 to 62**

- 51 Lords Amendment 60 would reference the definition of “relevant right or interest” inserted by Lords Amendment 48.
- 52 Lords Amendments 61 and 62 would be consequential upon Amendment 24.

## **Lords Amendments to Clause 27**

### **Lords Amendments 63 to 68**

- 53 Lords Amendment 63 would provide that increases in the value of land caused by the prospect of the scheme underlying a compulsory purchase should be disregarded in new section 6A(2)(a) of the Land Compensation Act 1961.
- 54 Lords Amendment 64 would amend the formulation of “No-scheme principle” Rule 4 such that a valuer must assume that no other projects (as described) would be carried out, rather than requiring there to be “no consideration of whether other projects (as described) would be carried out. This formulation would be in conformity with “No-scheme principle” Rules 1 to 3.
- 55 Lords Amendment 65 would restrict “No-scheme principle” Rule 4 in new section 6A(7) of the Land Compensation Act 1961 to disregarding only those schemes that could be undertaken only by the exercise of statutory functions or compulsory purchase powers.
- 56 Lords Amendment 66 would extend the description of a regeneration or redevelopment project in the vicinity of a “relevant transport project” to one which has been “facilitated by” such a project as well those which have been “made possible” by one.
- 57 Lords Amendments 67 and 68 would amend the definition of a “relevant transport project” in new section 6D(4) of the Land Compensation Act 1961 such that the “relevant transport project” could be carried out before after or at the same time as the associated redevelopment or regeneration scheme.

## **Lords Amendments to Clause 31**

### **Lords Amendments 69 to 73**

- 58 Lords Amendments 69 to 71 would amend new section 403A of the Greater London Authority Act 1999 to enable the Greater London Authority and Transport for London to promote a joint compulsory purchase order using Transport for London’s compulsory purchase powers as a highway authority under the Highways Act 1980, in addition to its general compulsory purchase powers under Schedule 11 to the Greater London Authority Act 1999.
- 59 Lords Amendment 72 would insert new section 403B into the Greater London Authority Act 1999 to enable a Mayoral development corporation and Transport for London to promote a joint compulsory purchase order using Transport for London’s compulsory purchase powers as a highway authority under the Highways Act 1980 or its general compulsory purchase powers under Schedule 11 to the Greater London Authority Act 1999.

60 Lords Amendment 73 would be consequential upon Lords Amendment 72.

## **PART 3: FINAL PROVISIONS**

### **Lords Amendment 74 (New Chapter 3 and New Clause) after Clause 36**

#### **Lords Amendment 74**

- 61 Lords Amendment 74 would allow the Secretary of State to make consequential amendments to any legislation in consequence of any of the provisions in Part 2 of the Bill.
- 62 This clause would extend and apply to the United Kingdom.

### **Lords Amendment to Clause 38**

#### **Lords Amendment 75**

- 63 Lords Amendment 75 would remove the power from the Bill for the Secretary of State to make consequential amendments by Regulations to any legislation in consequence of any measures in the Bill.

### **Lords Amendments to Clause 39**

#### **Lords amendments 76 to 79**

- 64 Lords Amendments 76 and 78 update the Bill's provisions about the procedures for making regulations in consequence of Lords Amendments 54 and 55.
- 65 Lords Amendments 77 and 79 update the Bill's provisions about the procedures for making regulations in consequence of Lords Amendment 74.

### **Lords Amendment to Clause 40**

#### **Lords Amendment 80**

- 66 Lords Amendment 80 updates the Bill's extent clause in consequence of Amendment 74.

### **Lords Amendment to Clause 41**

#### **Lords Amendments 81, 82 and 83**

- 67 Lords Amendment 81 would provide for regulation-making powers conferred by Lords Amendment 4 to come into force on the day the Act is passed.
- 68 Lords Amendment 82 would provide for regulation-making powers conferred by Lords Amendments 9 to come into force on the day the Act is passed.
- 69 Lords Amendment 83 would provide for regulation-making powers conferred by Lords Amendment 74 to come into force on the day the Act is passed.



# **SCHEDULES**

## **Lords Amendment to Schedule 1**

### **Lords Amendment 84**

- 70 Lords Amendment 84 relates to the procedure for examining proposals for the modification of a neighbourhood development plan in cases where the proposed modifications would materially affect the policies in the plan but are not so significant or substantial as to change the nature of the plan. It corresponds to Lords Amendment 5 which makes equivalent provision in relation to the making of neighbourhood development orders and neighbourhood development plans.
- 71 The amendment would add to the existing non-exhaustive list (set out in paragraph 15 of New Schedule A2 to the Planning and Compulsory Purchase Act 2004) of matters that Regulations on the examination of neighbourhood development plans may address.
- 72 The amendment would also provide for Regulations to set out the requirements for the person appointed to examine a neighbourhood development order or plan to follow during the examination process. For example, Regulations may require examiners to provide information to, and to hold meetings with, a qualifying body, local planning authority and others, and for the examiner to publish draft recommendations.

## **Lords Amendments to Schedule 3**

### **Lords Amendments 85 to 90**

- 73 These Lords Amendments are consequential on the Lords Amendments to section 100ZA which are described in paragraph 19 above.

## **Financial Effects of Lords Amendments**

- 74 The provisions in Lords Amendment 22 would require a planning application for the change of use or demolition of a drinking establishment. Local planning authorities may be liable to pay compensation where planning permission is refused, or granted subject to conditions, for development which previously would have been permitted. These provisions may therefore also have an impact on public expenditure.

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