

Neighbourhood Planning Bill

SECOND
MARSHALLED
LIST OF AMENDMENTS
TO BE MOVED
ON REPORT

The amendments have been marshalled in accordance with the Order of 21st February 2017, as follows –

Clauses 1 to 4	Clauses 10 to 13
Schedule 1	Schedule 3
Clauses 5 to 9	Clauses 14 to 44
Schedule 2	Title.

[Amendments marked ★ are new or have been altered]

**Amendment
No.**

After Clause 13

LORD KENNEDY OF SOUTHWARK
BARONESS DEECH
LORD SHIPLEY

35

Insert the following new Clause –

“Change of use of drinking establishments

- (1) In regulation 3 of the Town and Country Planning (Use Classes) Order 1987, after paragraph (6)(o) insert –
“(p) as a drinking establishment”.
- (2) Before exercising his or her powers under section 41(1) of this Act, the Secretary of State must exercise the powers conferred by sections 59, 60, 61, 74 and 333(7) of the Town and Country Planning Act 1990 to remove permitted development rights relating to the change of use or demolition of “drinking establishments”.

LORD BEECHAM
LORD KENNEDY OF SOUTHWARK

36

Insert the following new Clause –

“Funding for local authority functions

- (1) The Secretary of State must consult local planning authorities prior to the commencement of any new statutory duties in respect of planning to ensure that they have –

After Clause 13 - continued

- (a) adequate resources, and
- (b) adequate funding,

to enable them to undertake the additional work required to fulfil the new duties.

- (2) In any instance where local authorities are found not to have adequate resources or funding, an independent review of the additional cost of the new statutory duties, setting out the level of resource required to allow planning authorities to fulfil the statutory duties, must be conducted.”

37 Insert the following new Clause—

“Review of sustainable drainage

Before exercising his or her powers under section 41(1), the Secretary of State must carry out a review of the impact on communities’ resilience to flooding of planning legislation, government planning policy and local planning policies concerning sustainable drainage in relation to the development of land in England.”

BARONESS GARDNER OF PARKES

38 Insert the following new Clause—

“Retrospective planning permission

- (1) Where there has been a breach of planning control, as defined under section 171A of the Town and Country Planning Act 1990 (“the 1990 Act”), the person or body who has caused the breach must make a retrospective planning application for planning permission under section 73A of the 1990 Act (planning permission for development already carried out).
- (2) In respect of a retrospective planning application, the person or body who has caused the breach of planning control is liable for the payment of fees or charges to the local planning authority in respect of the costs incurred in carrying out the functions connected with the retrospective planning application.
- (3) The person or body who has caused the breach of planning control is liable for the payment of a significant additional charge, connected to the retrospective nature of the planning application, in addition to the fees and charges the person or body is liable for under subsection (2).
- (4) In carrying out the functions connected with a retrospective planning application, the local planning authority must consult the people residing in the local area to which the retrospective planning application relates.”

BARONESS YOUNG OF OLD SCONE

38A Insert the following new Clause—

“Planning: duty to have regard to the protection of ancient woodland and veteran and aged trees

In section 197 of the Town and Country Planning Act 1990 (planning permission to include appropriate provision for preservation and planting of trees), after paragraph (b) insert—

After Clause 13 - continued

- “(c) to refuse permission for any development which may result in the loss or deterioration of ancient woodland, and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location are wholly exceptional;
 - (d) to refuse permission for a development in respect of which there is insufficient provision made for the preservation of woodland and planting of trees; and
 - (e) to impose any such conditions and make any such orders as are necessary to protect woodland and trees.
- (2) The local planning authority must—
- (a) ensure that all planning applications are compatible with the protection and enhancement of the environment; and
 - (b) ensure that the protection and enhancement of the environment is identified as a strategic priority in the authority’s area under section 19 or 35 of the Planning and Compulsory Purchase Act 2004.
- (3) In this section—
- (a) “ancient woodland” means an area that has been continuously wooded since the year 1600;
 - (b) “veteran and aged trees” means trees which because of their age, size or condition are of exceptional value culturally, in the landscape or to wildlife.””

LORD TRUE
LORD TOPE

38B Insert the following new Clause—

“Local determination of the application of prior approval for conversion from office to residential use

- (1) Notwithstanding—
- (a) any section of the Town and Country Planning (General Permitted Development) (England) Order 2015, the Town and Country (General Permitted Development) (England) (Amendment) Order 2016, or
 - (b) any section of any other order or regulation purporting to convey a right to developers to automatic prior approval of the conversion of an office (Class B1(a)) or retail premises to residential use (Class C3), or the demolition of such premises for such conversion,

consent may be refused by the local planning authority for the conversion, or demolition for conversion, of any such office or retail space to residential use, if the local authority has, by a majority vote in Council, passed a formal resolution stating that the purported right to approval for such demolition or conversion without full planning consideration shall no longer apply within that local authority planning area, or in any part of it.

After Clause 13 - continued

- (2) In reaching any decision on the conversion of offices to residential use the local planning authority shall be able to take account of all representations from the public or from local businesses, and of all aspects of an approved local plan, neighbourhood plan or supplementary planning document incorporated within an approved local plan, provided that it has previously passed a resolution under subsection (1).
- (3) A resolution under subsection (1) may only be adopted if the local planning authority has laid before the Council no less than a week prior to the vote under subsection (1) a report demonstrating that—
 - (a) the operation of prior approval is damaging local businesses and the local economy and that planning control over the retention of office space is necessary for the future economic development of the area, or
 - (b) active businesses within the area covered by the resolution are being expelled from office or retail space to enable its conversion to residential use.
- (4) No resolution may be adopted under subsection (1) if the local authority concerned has not met its housing targets in the preceding year, or cannot satisfactorily demonstrate in the report tabled under subsection (3) that it will exceed those targets in the year concerned.
- (5) A copy of the report laid under subsection (3) must be submitted to the Secretary of State no later than the day on which the agenda for the Council meeting concerned is published.
- (6) The Secretary of State may set aside, within three months of its passing, any resolution made by a local planning authority under subsection (1) if the Secretary of State does not consider that conditions under subsection (3)(a) and (b) are being met.”

After Clause 14

LORD SHIPLEY
LORD SCRIVEN
LORD TOPE

39 Insert the following new Clause—

“Permitted development: use clauses and demolition of drinking establishments

- (1) The Town and Country Planning (Use Classes) Order 1987 (S.I. 1987/764) is amended as follows.
- (2) At the end of regulation 3(6) insert—
 - “(p) as a drinking establishment.”
- (3) In the Schedule, leave out the paragraph “Class A.4 Drinking Establishments”.
- (4) The Town and Country Planning (General Permitted Development) Order 1995 (S.I. 1995/418) is amended as follows.
- (5) In Part 3 of Schedule 2 (permitted development)—
 - (a) in Class A: Permitted development, leave out “A.4 (drinking establishments)”;

After Clause 14 - continued

- (b) in Class AA: Permitted development, leave out “Class A.4 (drinking establishments)”;
 - (c) in Class C: Permitted development, leave out “Class A.4 (drinking establishments)”.
- (6) In Part 31 of Schedule 2 (demolition of buildings) under A.1 at the end insert –
 “() the building subject to demolition is classed as a drinking establishment”.

BARONESS PARMINTER
 LORD SHIPLEY

40 Insert the following new Clause –

“Planning decisions: involvement of neighbourhood planning bodies

For section 75ZB of the Town and Country Planning Act 1990 (information about neighbourhood development plans) substitute –

“75ZB Responsibilities of decision-makers in respect of neighbourhood development plans in the exercise of planning functions

- (1) In considering whether to grant planning permission or permission in principle for development which affects land all or part of which is included within the area covered by a made or emerging neighbourhood development plan, the local planning authority must –
 - (a) have special regard to the desirability of upholding the policies and proposals contained in the neighbourhood development plan;
 - (b) send a copy of the application to the relevant neighbourhood planning body;
 - (c) allow the relevant neighbourhood planning body a period of 21 days from receipt of the application to make recommendations about how the application should be determined; and
 - (d) take into account any recommendations made under paragraph (c).
- (2) Where a neighbourhood planning body recommends that planning permission should not be granted in respect of the application and the following conditions are met, the local planning authority may not approve the application without first consulting the Secretary of State.
- (3) The conditions mentioned in subsection (2) are that –
 - (a) the development is not classed as a householder development; and
 - (b) the development is not on a site identified for the proposed development in the relevant neighbourhood development plan.
- (4) Consultations with the Secretary of State under subsection (2) must follow the procedures set out in provisions 10 to 12 of the Town and Country Planning (Consultation) (England) Direction 2009.

After Clause 14 - continued

- (5) In this section—
- “emerging neighbourhood development plan” means a neighbourhood development plan that has been examined, having met the public consultation requirements necessary to proceed to this stage;
- “householder development” means proposals to alter or enlarge a single house, including works within the curtilage of the house;
- “neighbourhood planning body” means a town or parish council or neighbourhood forum, as defined in section 61F.”

Clause 16

LORD BOURNE OF ABERYSTWYTH

- 41** Page 16, line 30, leave out subsection (2) and insert—
- “(2) The temporary possession of the land must be authorised by the type of instrument (the “authorising instrument”) that would be required if the acquiring authority proposed to acquire that land compulsorily for the purposes for which it proposes to take temporary possession of that land.”
- 42** Page 16, line 41, at end insert—
- “(3A) But in so far as an authorising instrument authorises the temporary possession of land, the instrument is not to be subject to special parliamentary procedure by virtue of any enactment applying that procedure to an instrument authorising the compulsory acquisition of land, unless the land which is proposed to be subject to temporary possession is held by the National Trust inalienably.
- (3B) For the purposes of subsection (3A)—
- (a) “the National Trust” means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907, and
- (b) land is held by the National Trust “inalienably” if it is inalienable under section 21 of the National Trust Act 1907 or section 8 of the National Trust Act 1939.”
- 43** Page 16, line 41, at end insert—
- “() For the purposes of subsection (3)(c), the reference to compulsory acquisition does not include the compulsory acquisition of a right over land by creation unless section 15(2) applies in relation to the acquiring authority by virtue only of a power or authorisation to acquire a right over land by creation.”

Clause 17

LORD BOURNE OF ABERYSTWYTH

- 44** Page 17, line 11, leave out from “who” to “so” and insert—
- “(a) has an interest in or a right to occupy the land,

Clause 17 - continued

- (b) owns land to which is annexed a relevant right or interest which adversely affects the land to be subject to temporary possession, or
- (c) owns land which benefits from a restriction as to the user of the land to be subject to temporary possession where the restriction arises by virtue of a contract to which the person is a party,”

45 Page 17, line 26, at end insert –

- “() Where the authorising instrument mentioned in section 16 is a compulsory purchase order, a notice of intended entry under this section may not be served after the end of the period of three years beginning with the day on which the authorising instrument becomes operative.
- () In any other case, a notice of intended entry under this section may not be served after the end of the period of five years beginning with the day on which the authorising instrument becomes operative.”

46 Page 17, line 26, at end insert –

- “(8) In this Chapter “relevant right or interest” means any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land (including any natural right to support).”

Clause 20

LORD BOURNE OF ABERYSTWYTH

47 Page 18, line 44, at end insert –

- “() A person (a “beneficial claimant”) is entitled to receive compensation from the authority for any loss or injury the beneficial claimant sustains as a result of the authority –
 - (a) interfering with a relevant right or interest annexed to land belonging to the beneficial claimant, or
 - (b) breaching a restriction as to the user of land arising by virtue of a contract where –
 - (i) the beneficial claimant is a party to the contract, or
 - (ii) the restriction benefits land which belongs to the beneficial claimant.”

48 Page 19, line 1, leave out subsection (3)

49 Page 19, line 5, leave out subsection (4)

50 Page 19, line 21, leave out “subsection (2)” and insert “this section”

Clause 24

LORD BOURNE OF ABERYSTWYTH

- 51** Page 22, line 27, at end insert –
- “() The acquiring authority may use land as described in subsection (1) even if this involves –
- (a) interfering with a relevant right or interest, or
 - (b) breaching a restriction as to the user of land arising by virtue of a contract.”
- 52** Page 22, line 30, at end insert –
- “(4) Nothing in this section authorises an interference with –
- (a) a right of way on, under or over land that is a protected right, or
 - (b) a right of laying down, erecting, continuing or maintaining apparatus on, under or over land if it is a protected right.
- (5) Nothing in this section authorises –
- (a) an interference with a relevant right or interest annexed to land belonging to the National Trust which is held by the National Trust inalienably, or
 - (b) a breach of a restriction as to the user of land which does not belong to the National Trust –
 - (i) arising by virtue of a contract to which the National Trust is a party, or
 - (ii) benefiting land which does belong to the National Trust.
- (6) For the purposes of subsection (5) –
- (a) “the National Trust” means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907, and
 - (b) land is held by the National Trust “inalienably” if it is inalienable under section 21 of the National Trust Act 1907 or section 8 of the National Trust Act 1939.
- (7) In this section –
- “protected right” means –
- (a) a right vested in, or belonging to, a statutory undertaker for the purpose of carrying on its statutory undertaking, or
 - (b) a right conferred by, or in accordance with, the electronic communications code on the operator of an electronic communications code network (and expressions used in this paragraph have the meaning given by paragraph 1(1) of Schedule 17 to the Communications Act 2003);
- “statutory undertaker” means a person who is, or who is deemed to be, a statutory undertaker for the purposes of any provision of Part 11 of the Town and Country Planning Act 1990;
- “statutory undertaking” is to be read in accordance with section 262 of the Town and Country Planning Act 1990 (meaning of “statutory undertakers”).”

Clause 26

LORD BOURNE OF ABERYSTWYTH

- 53 Page 23, line 16, at end insert –
“(A1) The appropriate national authority must by regulations make provision about –
(a) the reinstatement of land subject to a period of temporary possession, and
(b) the resolution by an independent person of disputes about reinstatement.”
- 54 Page 23, line 16, at end insert –
“(A2) The Secretary of State may by regulations exclude the application of any provision of this Chapter in relation to a person who is an acquiring authority as a result of an authorisation by virtue of –
(a) section 11, 12 or 12A of the Pipe-lines Act 1962 (compulsory purchase of land or rights over land in connection with pipe-lines),
(b) section 12 or 13 of the Gas Act 1965 (compulsory purchase of rights in relation to storage of gas etc),
(c) paragraph 1 of Schedule 3 to the Gas Act 1986 (compulsory purchase of land by gas transporter), or
(d) paragraph 1 of Schedule 3 to the Electricity Act 1989 (compulsory purchase of land by licence holder).”
- 55 Page 23, line 25, leave out paragraph (a)
- 56 Page 23, line 29, at end insert “including by modifying that provision so that it is effective in relation to those cases or types of case,”
- 57 Page 23, line 45, leave out paragraph (i)
- 58 Page 24, line 3, at end insert –
“() Before making regulations under this section the Secretary of State or the Welsh Ministers, as the case may be, must carry out a public consultation.”

LORD BEECHAM

- 59 Page 24, line 3, at end insert –
“(2A) The Secretary of State and the Welsh Ministers must by regulations –
(a) make provision for the reinstatement of land at the end of a period of temporary possession;
(b) make provision for the resolution of disputes by an independent arbiter; and
(c) consult interested parties before making regulations under this section.”

Clause 26 - continued

60 Page 24, line 3, at end insert—

“() The Secretary of State must consult on the use of Development Consent Orders before making regulations under subsection (1).”

Clause 27

LORD BOURNE OF ABERYSTWYTH

61 Page 24, line 16, at end insert—

““relevant right or interest” has the meaning given by section 17(8).”

Clause 29

LORD BOURNE OF ABERYSTWYTH

62 Page 25, line 17, leave out “there is to be no consideration of whether” and insert “it is to be assumed that no”

Clause 33

LORD BOURNE OF ABERYSTWYTH

63 Page 32, line 45, after “403A” insert “, 403B”

After Clause 38

LORD BOURNE OF ABERYSTWYTH

64 Insert the following new Clause—

“CHAPTER 3**CONSEQUENTIAL PROVISION****Consequential provision**

- (1) The Secretary of State may by regulations make provision in consequence of any provision of this Part.
- (2) Regulations under subsection (1) may amend, repeal or revoke any enactment.
- (3) In subsection (2) “enactment” includes—
 - (a) an enactment contained in subordinate legislation within the meaning of the Interpretation Act 1978, and
 - (b) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales.”

LORD KENNEDY OF SOUTHWARK

65 Insert the following new Clause—

“Amendment to TfL powers

In Schedule 11 of the Greater London Authority Act 1999 (miscellaneous powers of Transport for London) after paragraph 12 insert—

After Clause 38 - continued

“12A Transport for London or any subsidiary of Transport for London may sell, exchange or lease its land for the purpose of providing housing of any description at such price, or for such consideration, or for such rent, as having regard to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration or rent might have been obtained if the land were sold, exchanged or leased for the purpose of providing housing of another description or for a purpose other than the provision of housing and for the purposes of paragraph 29 below Transport for London or any subsidiary of Transport for London shall not be required to act as if it were a company engaged in a commercial enterprise if undertaking any activities at paragraphs 15(2) or (3) below with a view to selling, exchanging or leasing its land under this paragraph.”

66 Insert the following new Clause -

“Amendment to GLA powers

- (1) Section 333ZC of the Greater London Authority Act 1999 (disposal etc of land held for housing or regeneration purposes) is amended as follows.
- (2) In subsection (1) at beginning insert “Subject to subsection (6)”.
- (3) After subsection (5) insert –
 - “(6) The Authority or any subsidiary of the Authority may sell, exchange or lease land held by it for the purposes of housing or regeneration for the purpose of providing housing of any description at such price, or for such consideration, or for such rent, as having regard to all the circumstances of the case is the best that can reasonably be obtained, notwithstanding that a higher price, consideration or rent might have been obtained if the land were sold, exchanged or leased for the purpose of providing housing of another description or for a purpose other than the provision of housing and for the purposes of subsection (1) above the Authority or any subsidiary of the Authority shall not be required to obtain the consent of the Secretary of State to a disposal made in accordance with this subsection (6).”

Clause 40

LORD BEECHAM

67 Page 35, line 40, at end insert –

“() Before making regulations under this section, the Secretary of State must consult the Welsh Ministers.”

BARONESS CUMBERLEGE

LORD PANNICK

LORD JUDGE

LORD KENNEDY OF SOUTHWARK

LORD BOURNE OF ABERYSTWYTH

68 Leave out Clause 40

Clause 40 - continued

69 [Withdrawn]

Clause 41

LORD BOURNE OF ABERYSTWYTH

70 Page 36, line 12, leave out “26(1)” and insert “26(A1), (A2) or (1)”

LORD BEECHAM

71 Page 36, line 12, at end insert –
 “() regulations made under section 26(2A);”

LORD BOURNE OF ABERYSTWYTH

72 Page 36, line 13, leave out “40(1)” and insert “(Consequential provision)(1)”

73 Page 36, line 16, leave out “26(1)” and insert “26(A1), (A2) or (1)”

74 Page 36, line 23, leave out “40(1)” and insert “(Consequential provision)(1)”

LORD BEECHAM

75 Page 36, line 34, at end insert –
 “() The Secretary of State must consult interested parties on draft regulations under section 26(1) before laying them before either House of Parliament.”

Clause 42

LORD BOURNE OF ABERYSTWYTH

76 Page 36, line 40, leave out “This Part extends” and insert “Section (Consequential provision) and this Part extend”

Clause 43

LORD BOURNE OF ABERYSTWYTH

77 Page 37, line 13, at end insert –
 “() section (Consequential provision);”

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