

**Written evidence submitted by David Vickery DipT&CP MRTPI
(HPB 23)**

Housing and Planning Bill 2015-16

Planning: Clauses 97, 98, 102 & 103

- ❖ Recently retired (Sept 2015) Senior Planning Inspector who has conducted 20 local plan examinations; individually advised over 40 authorities on their local plans; spoken about local plans at numerous RTPI, PAS, university and Planning Inspectorate seminars and talks; and undertaken hundreds of planning appeals over 19 years.
- ❖ Worked for 11 years in planning consultancies in Surrey and West Sussex running teams dealing with strategic site promotions through the planning system, with numerous appearances at inquiries and hearings.
- ❖ Worked for 10 years in metropolitan and shire districts in Yorkshire and Hampshire dealing with development management and local plan work.
- ❖ Served on a West Yorkshire district's Planning Committee for over 5 years, dealing as a councillor with local plans and development proposals.
- ❖ Has been involved in local voluntary organisations concerned with the environment, such as civic societies.

SUMMARY

Clause 97 - Power to give direction to examiner of development plan document

Delete the clause because:

- ❖ the Secretary of State already has sufficient existing powers to intervene in the examination of a local plan under section 21 of the Planning and Compulsory Purchase Act 2004;
- ❖ the public will believe that the Planning Inspectorate's handling of their opposition to, or promotion of, development land is no longer being dealt with fairly, openly, or impartially;
- ❖ Inspectors' decisions could be based on irrelevant and biased evidence;
- ❖ the public's trust in the planning system to resolve their concerns will be seriously harmed; and
- ❖ the local plan process will become more protracted and subject to more legal disputes, thereby delaying housing development.

Clause 99 - Secretary of State's default powers

Delete the clause or set out how plans would be written because:

- ❖ none of the bodies with the expertise are likely to be able to undertake the task; and
- ❖ it goes against localism, and against our country's democratic principles that presently require elected representatives to deliver local plans and to be answerable to local people for the proposals in them.

Clause 102 - Permission in principle for development of land, and Clause 103 - Local planning authority to keep register of particular kinds of land

Delete those parts of the Clauses dealing with "permission in principle" for development land set out in a "register or other document":

- ❖ the Explanatory Notes say this will only apply to future plans and only to housing sites, but the Bill does not actually state this;
- ❖ some plans will 'opt-in' for permission and some plans won't, creating two different types of plans and thus confusion for developers and the public;
- ❖ it is unclear how the local retail, employment, and community facilities to serve the housing going will be built at the right time, or even at all;
- ❖ preparation and examinations of plans will take longer as more is at stake;
- ❖ authorities will lose money - there will be reduced fees from outline applications which will affect their ability to plan for their areas;
- ❖ the register or other document could be used to identify other sorts of development land;
- ❖ an "other document" is not defined and is too loose and potentially open to abuse;
- ❖ terms such as a "prolonged period" and "change of circumstances" are not defined; and
- ❖ Local people will have little say over development in their own areas.

Clause 97 - Power to give direction to examiner of development plan document

Amendment: delete the Clause in its entirety.

1. Section 20 of the Planning and Compulsory Purchase Act 2004 requires the local planning authority to submit its local plan (a "development plan document") for "independent" examination by a person (a Planning Inspector) appointed by the Secretary of State.
2. This Clause would enable the Secretary of State to direct the Inspector not to take any step in the examination (or part of it) until a specified time or the direction is withdrawn; to direct the consideration of any specified matters; to direct that any specified persons must be heard; and to direct that any specified procedural step must be taken.
3. Thus the Inspector will, in effect, become directly controlled by the Secretary of State, and so will no longer be independent. The Inspector's assessment of the soundness and legal compliance of a local plan could be directed by the Secretary of State.
4. **This Clause is unnecessary because the Secretary of State already has sufficient existing powers to intervene in the examination of a local plan.** The Bill's Impact Statement says that "*the key benefit of [all] the measures is to allow for a more targeted approach to intervention in plan-making by the Secretary of State.*" But the Secretary of State in section 21 of the 2004 Act can direct that the plan, or a specified part or parts of it, should be submitted to him for his approval and not the Inspector's. The Secretary of State can already surgically target the exact part or parts of a plan (or even the whole plan) which are causing concern and which should not be left to an Inspector's decision. Therefore, this Clause is unnecessary and is purely for administrative convenience and control.
5. **The public will believe that the Planning Inspectorate's handling of their opposition to, or promotion of, development land is no longer being dealt with fairly, openly, or impartially.** Each Inspector is technically a tribunal, and the three principles of fairness, openness and impartiality first set out in the 1957 Franks Report (after the Crichton Down affair) still govern how they operate, and are set out in the Planning Inspectorate's current Annual Report and its Code of Conduct. Impartiality, said Franks, means that tribunals should be free of undue influence from any Government departments concerned with their subject area. This proposal means that Inspectors can no longer be seen, or perceived, to be impartial in their examination of local plans.
6. **Inspectors' decisions could be based on irrelevant and biased evidence.** The Inspectorate's Code of Conduct says that their decisions and recommendations should be based on the relevance and substance of the evidence and arguments put to them by the parties. But how can this be the case if the Secretary of State has directed them not to run the examination properly, or to hear additional, and possibly irrelevant, evidence? How can anyone trust that the Inspector has come to a fair decision in the public interest in such circumstances?

7. **The public's trust in the planning system to resolve their concerns will be seriously harmed.** The Inspectorate has built an unrivalled reputation for fairness and impartiality. Inspectors' decisions are often on highly contentious matters and are almost universally respected and, in most cases, are accepted. People take notice of the Inspectorate because they know it is trustworthy and that Inspectors speak and act without fear or favour. This proposal will badly damage that ability and thus the very good present public reputation of the Inspectorate.
8. Even if no direction is issued in a particular case, local people will wonder what behind the scenes influence, pressure, or threat has been placed upon the Inspector. As judges have frequently remarked, the appearance of impartiality is just as important as its actuality.
9. **The local plan process will become more protracted and subject to more legal disputes, thereby delaying housing development.** Unintended consequences flowing from this Clause could include more plans being found unsound earlier in the process and/or being found unsound more often. Inspectors will no longer be seen to be independent or trusted by the Secretary of State, and so confidence in their judgements will diminish. People will believe that they are not receiving a fair, open and impartial hearing of their grievances. Trust in the planning system will be lost. This will prolong arguments and it will increase the number of High Court challenges and judicial reviews.
10. The country needs a strong and robust Planning Inspectorate to make independent, objective decisions on controversial planning issues, and this Clause will harm both that and its dispute resolution capability.

Clause 99 - Secretary of State's default powers

Amendment: The Clause should either be deleted, or it should specify exactly who would do the work of writing a local plan instead of the local planning authority.

11. This Clause 9 would allow the Secretary of State to write a local plan (prepare or revise it) where he thinks an authority is failing or omitting to do the work.
12. But neither it nor the Bill's Explanatory Notes contain any details of how this would be done or who would write the plan. DCLG has promised that "*Ministers will shortly be bringing forward further details.*" What are these? The details should be in the Bill because **none of the bodies with the expertise are likely to be able to undertake the task.**
13. There is not the time or expertise available in the Inspectorate (it is busy dealing with a backlog of cases and more complex casework) or in central government (DCLG) to do this work. Moreover, it would conflict with the Inspectorate's semi-judicial role as an arms-length body charged with assessing the soundness of plans.

14. Neighbouring local authorities do not have the staff to undertake extra work. In any event, they could be accused of a conflict of interest by placing development in a nearby authority's area rather than their own. Too many local authorities will be only too pleased to leave this to Government, and for it to take all the unpopularity.
15. Private consultancies writing plans would exacerbate the decline in staffing and morale in council planning departments, and it would be seen as another step in their privatisation.
16. In addition, **it goes against localism, and against our country's democratic principles that presently require elected representatives to deliver local plans and to be answerable to local people for the proposals in them.**

Clause 102 - Permission in principle for development of land, and Clause 103 - Local planning authority to keep register of particular kinds of land

Amendment: Add the details requested below, and/or amend Clause 102 (2):

(2) In this section—

"prescribed" means prescribed in a development order;

"qualifying document" means a development plan document, ~~register or other document, as it has effect from time to time~~, which—

(a) is ~~made, maintained or~~ adopted by a local planning authority,

(b) is of a prescribed description,

(c) indicates that the land in question is allocated for development for the purposes of this section, and

(d) contains prescribed particulars in relation to the land allocated and the kind of development for which it is allocated.

.....

(4) Permission in principle granted by a development order—

(a) takes effect when the qualifying document is adopted ~~or made~~ by the local planning authority

.....

(7) Delete the sub-clause in its entirety.

17. The Secretary of State under Clause 102 will be able to grant "permission in principle" via a development order to land that is allocated in local and neighbourhood plans, and to registers and other documents. The technical details consent (reserved matters) would be dealt with later. It seems on a first glance to be a good idea as it gives certainty for developers, but there are many unresolved implementation problems which make it unworkable, anti-democratic, and authoritarian.
18. **The Explanatory Notes say this will only apply to future plans and only to housing sites, but the Bill does not actually state this.** For instance, it could later apply to other types of plan allocations such as retail and employment land.

19. Legally, plans will have to specifically state that allocations "opt-in" to this automatic permission. So **some plans will 'opt-in' and some plans won't, creating two different types of plans and thus confusion for developers and the public.**
20. Plan allocations will have to be very precise and carefully worded - exactly how many houses and so on. And if permission in principle is given for housing, **how are the local retail, employment, and community facilities to serve the housing going to be built at the right time, or even at all?** Will the development order permit subsidiary and ancillary uses to the housing? Section 60 of the Town and Country Planning Act 1990 does not permit authorities to impose conditions on permissions granted by development orders - the conditions or limitations have to be specified in the order itself. Clause 104 only alters s60 of the 1990 Act to require the approval of the authority (a) for those building operations specified in the order (only housing at the moment) and (b) for "*matters that relate to those operations*" or "*the use of the land in question following those operations*" which are specified in the order.
21. So the development order would have to specify the "matters" and so on clearly but yet loosely enough to allow authorities to impose conditions which would enable the securing of associated infrastructure and other requirements. It might be possible, to do this in secondary legislation, but it would be difficult and open to legal challenges.
22. **Preparation and examinations of plans will take longer because more is at stake.** Barristers will appear more frequently, as will legal challenges and judicial reviews in the High Court.
23. **Authorities will lose money - there will be reduced fees from outline applications which will affect their ability to plan for their areas.** The Bill's Impact Statement estimates that the number of sites affected by this provision could amount to around 7,000 sites each year. Which is a lot of income lost.
24. Permission can be granted by land being included in a "register" or "other document". The example currently mentioned by the Government is for "brownfield" land (e.g. old industrial sites). But **the register or other document could be used to identify other sorts of development land** such as for housing, retail or employment or other controversial developments (fracking?). Moreover, legally only a "development plan document" can allocate land for development, which is what these registers and other documents would in effect be doing. And how will such registers or other documents deal with the legal requirement to carry out Strategic Environmental Assessments of allocations?
25. **What is meant by an "other document"?** - it is too loose and potentially open to abuse. It could be anything. For instance, a list personally drawn up by the Mayor of land that he considers suitable for development? It should be preferably be deleted or closely defined.
26. The Bill says that where a permission in principle has existed for a prolonged period and there has been a "*material change of circumstances since the permission came into force*", then the authority is not bound by it. **What is a prolonged period and what change of circumstances could justify this?**

27. Permission for development land on registers and other documents appear to be a resurgence of semi-formal "bottom drawer" plans with little public consultation. Taken together, I agree with the TCPA that this is "*a major change to English planning that the Government is introducing with no consultation.*" **Local people will have little say over development in their own areas.**
28. I have no objection to Clause 103 (registers) provided the power to make a development order to grant "permission in principle" on land within them is taken out of Clause 102 as I have set out above.

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