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This year's influx of planning legislation and reform continues following the summer recess, with the publication last week of the [Neighbourhood Planning Bill](#), two related consultation papers and the Government's response to the March 2016 consultation on the reform of the compulsory purchase system.

The provisions in the Bill are intended to supplement other recent legislation (Housing and Planning Act 2016) and help to provide more land for housing and greater certainty for the housing sector, through measures to speed up the delivery of housing developments. The consultations set out proposals for more detailed measures to be made under regulations, to give effect to the Bill's provisions.

Proposals to strengthen neighbourhood planning

i. Relevance to decision-making process

The legal status of neighbourhood development plans (NDPs) in the decision-making process is clarified by Clause 1 and 2 of the Bill. In determining a planning application, a local planning authority (LPA) will now be required, under section 70 Town and Country Planning Act 1990 (TCPA 1990) to have regard to a post-examination neighbourhood development plan (a plan which is to be put to a referendum), so far as it is material to the application. Currently s70 does not specifically refer to NDPs.

ii. Neighbourhood Plan to become part of the development plan immediately post referendum approval

Further, section 38 of the Planning and Compulsory Purchase Act 2004 (PCPA 2004), which requires determination of planning applications to be made in accordance with the development plan for the area, will provide that an NDP becomes part of the development plan for that area as soon as it is approved by referendum. There is no need for the NDP to have been formally adopted by the LPA for it to form part of the development plan. These provisions will provide greater certainty for local planning authorities and developers in the determination process and should avoid appeal challenges where the status of the NDP at the time of determination has previously been unclear.

iii. New modifications process for Neighbourhood Plans & Neighbourhood Areas

Changes are proposed which would enable modifications to be made to NDPs and to neighbourhood development orders. Again, the aim is to streamline and clarify the process for making modifications and to mirror, in part, the procedures currently in place for modifications made to the development plan so that there is consistency. The proposals distinguish between minor modifications, modifications which materially affect policies in the plan and modifications which are so significant or substantial that they would change the nature of the plan. The type of modification will determine the level of scrutiny which the modification will be given.

A consultation "[Technical consultation on implementation of neighbourhood planning provisions in the Neighbourhood Planning Bill](#)" considers the proposed secondary legislation (regulations) required to set out the detailed procedures to implement these reforms.

Also included in the Bill provisions and consultation is the ability to modify a neighbourhood plan and provide for what is to happen to a neighbourhood development order or plan that is already in place for that area. The consultation notes that this will "enable neighbourhood planning groups to seek to change their neighbourhood area in response to changing circumstances". Proposals under the consultation include that an existing neighbourhood plan could remain in place, to guide planning applications for an amended or new area, until such time as a plan for the new or modified area is prepared. It is also proposed that the making of a new neighbourhood plan will be subject to a test during the examination process which will consider whether the proposals will have any adverse consequences on an existing plan, and if so, what measures would mitigate the effects. The consultation notes that it expects "any significant environmental effects of the new plan to continue to be assessed as part of the strategic environmental assessment process".

Finally, the Bill also deals with Statements of Community Involvement (SCI). It seeks to: introduce a power for regulations to be made requiring LPAs to review and update their SCI's at regular intervals; to publish their policies for giving advice to groups preparing NDP's in their SCI; and to complete any updating within an initial 12 month deadline.

Further restrictions to the use of Planning Conditions, particularly that the approval of the applicant will be needed to pre-commencement conditions

As part of attempts to speed up the planning process, the Government has already previously made a number of reforms in this area, including: publishing clearer planning guidance to LPAs on imposing conditions; a new deemed discharge for certain planning conditions; and a requirement on LPAs to provide written justification in a decision notice where a pre-commencement condition is imposed.



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The Bill now also provides for regulations to be made setting out conditions of a prescribed description which may not be imposed on planning permission or may only be imposed in prescribed circumstances. These include the use of some pre-commencement conditions. The provisions in the Bill are supplemented by a second consultation paper: "[Improving the use of planning conditions](#)". This considers specific types of conditions which the Government considers would fall foul of the national policy tests for imposing conditions and which may be the subject of restriction under the proposed regulations. It seeks views on whether these conditions should be prohibited through legislation and whether there are other conditions which should be added to that list. The summary list of planning conditions which the consultation says should not be used is:

- conditions which unreasonably impact on the deliverability of a development e.g. disproportionate financial burden;
- conditions which reserve outline application details;
- conditions which require the development to be carried out in its entirety;
- conditions which duplicate a requirement for compliance with other regulatory requirements e.g. building regulations;
- conditions requiring land to be given up; and
- positively worded conditions requiring payment of money or other consideration.

Specifically in relation to pre-commencement conditions, clause 7(5) provides that an LPA cannot impose a pre-commencement condition on a planning permission without first getting the written agreement of the applicant. These provisions are, the consultation says, included to ensure only "necessary" pre-commencement conditions are required, enabling development to go ahead without unnecessary delays. Engagement of the applicant by LPAs early in the application process is the desired outcome. Where agreement can't be reached, the consultation suggests that the LPA would either change the condition, allow the developer to comply with it after the development has begun or, remove the condition. An LPA would also have the right to refuse a planning application if it considers the pre-commencement condition does not meet the "necessary" test. The applicant would then have the ability to appeal the condition under the existing process.

These changes to pre-commencement conditions are of particular significance and have the potential to shake up pre-application engagement between applicants and LPAs. There may be more "horse trading" between applicants and LPAs on potential conditions both ahead of and immediately post the issue of reports to committee prior to the final determination of the application.

Planning Register – to enable potential registration of prior approval applications and notifications of PD to be on the planning register

A new provision, not previously announced by the Government, concerns the register of planning applications. The Bill's provisions enable the SoS to make regulations requiring information on prior

approval applications and notifications for permitted development to be placed on the register.

Compulsory Purchase

Part 2 of the Bill contains provisions relating to compulsory purchase. Most of the provisions reflect the Government's response to and identified next steps in the "[Consultation on further reform of the compulsory purchase system](#)", published on the same date as the Bill. Key provisions include:

- Temporary possession – enabling all those with a power to acquire land to take temporary possession of and use of land on a temporary basis for purposes connected with the particular CPO scheme e.g. as a construction compound or work site. This brings compulsory purchase orders in line with Development Consent Orders, Transport and Works Act Orders and Hybrid and Private Acts of Parliament which already allow temporary possession. The Bill also regulates the use of temporary possession powers by allowing land owners to limit the period of possession (to one year for residential land and six years for others) and enabling tenants to require that the tenancy is purchased outright. Those affected by proposed temporary possession powers may serve a blight notice in advance of any CPO provided they meet the current qualifying criteria.
- Interest rates on unpaid compensation – the current interest rate is 0%. The Bill allows the Treasury to specify a different rate of interest on unpaid compensation, provided that a claim has been made. The Government's response to the consultation suggests that the rate is likely to be between 4% and 8% above base rate.
- Calculation of market value – the provisions seek to clarify and codify the principles of compensation known as the "no-scheme world" which have been derived over time from practice and case law. This calculation means compensation for interests in land affected by a compulsory purchase order will be based on its open market value assuming the scheme is cancelled on the valuation date and disregarding any increase or decrease which may be attributable to the proposed scheme, including any blight. Provision is made for the scheme to be defined by the Upper Tribunal (Lands Chamber) if the parties cannot agree. Where a transport scheme allows regeneration or intensification of use which is secured by a separate CPO, the value added by the transport scheme is to be ignored.
- The Bill abolishes the controversial "Bishopsgate principle" whereby compensation for business tenants who hold leases outside the security of the Landlord and Tenant Act 1954 is calculated on the assumption that the tenancy will come to an end on the earliest date that it could under the terms of the lease. Instead, regard is to be had to how long the tenancy would have continued had there been no compulsory purchase.
- Time limit for confirmation notices – there will now be a statutory time limit of 6 weeks for an acquiring authority to issue notices confirming the compulsory purchase order and bringing it into effect. Previously there was no statutory requirement for the notices to be published within a stated timescale.

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- GLA and TfL: joint acquisition of land – the provisions will enable either body to compulsorily acquire all the land needed for a combined transport and regeneration or housing scheme on behalf of the other.

Where the changes apply

The provisions relating to neighbourhood planning, planning conditions and planning register extend to England and Wales but apply to England only.

The Compulsory Purchase provisions extend and apply to England and Wales with the exception of clause 23 (provisions repealing Part 4 of the Land Compensation Act 1961 with the effect that a claimant is no longer allowed to claim additional compensation

where additional development is permitted on the land within 10 years of the completion of the CPO) which extends to Great Britain and applies to England and Wales; and clauses 26 and 27 (joint acquisition of land by GLA and TfL and amendments to ensure powers relating to overriding easements apply correctly to GLA and TfL subsidiary companies) which extend to England and Wales but apply in England only.

Consultation Dates

The consultation on neighbourhood planning opened on 7 September 2016 and will close on 19 October 2016. The consultation on planning conditions opened on 7 September 2016 and will close on 2 November 2016.

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