



Campaign to Protect
Rural England

PLANNING ACT 2008

A CPRE briefing on changes to town and country planning legislation

March 2009

Introduction

1. The Planning Act gained Royal Assent on 26 November 2008. The Act contains a number of reforms to existing town and country planning legislation, particularly the Town & Country Planning Act 1990 and Planning & Compulsory Purchase Act 2004.
2. This briefing outlines the reforms to existing town and country planning legislation of most significance to CPRE. These reforms will need secondary legislation before they can be implemented. This briefing material will also be held on CPRE's Planning Help website. The web content will be updated to take account of the most significant secondary legislation as and when it comes into force¹. This briefing should be read as an early interpretation of how the Act may work.
3. Most of the Act is concerned with new procedures for the planning of major infrastructure projects. Details of these new procedures are contained in a separate briefing paper.

New Duties

4. Under Sections 181 and 182 of the Act, both Regional Spatial Strategies and development plan documents produced by local planning authorities must include policies designed to contribute to the mitigation of, and adaptation to climate change. Also, the overarching sustainable development duty in the Planning & Compulsory Purchase Act 2004 now includes a specific reference to the desirability of achieving good design (Section 183).

Delegation of regional planning functions

5. Under Section 179, Regional Planning Bodies can delegate any of their functions to the Regional Development Agency for their region. They can also bring this delegation to an end at any time, as well as continue to exercise the function themselves.

Preparation of local development documents

6. Under Section 180, local planning authorities are no longer required to list local development documents (LDDs) that will not have the force of the development plan, in their Local Development Scheme; nor will LDDs require sustainability appraisal. The Secretary of State has a reserve power to regulate that particular types of document can be prepared as LDDs rather than development plan documents. There will also no longer be a requirement for the local planning authority's Statement of Community Involvement to undergo independent examination.

Local development orders (LDOs)

7. LDOs are designed to have the effect of granting planning permission for anything stated in the order, and under Section 188, local planning authorities will no longer be required to link these to development plan policies as they were previously. CPRE questions the worth of

¹ For full details of secondary legislation connected with the Planning Act as it published, we suggest subscribing to the feed for new secondary legislation contained on the Office of Public Sector Information website (www.opsi.gov.uk/legislation/whatsnew).

LDOs on grounds of both principle and practicality, as an ill-conceived attempt to reduce the amount of consultation in the planning process. We believe that LDOs may only be workable in very specific cases involving urban regeneration.

Power to make non-material changes to planning permission

8. Section 190 will give local planning authorities powers to make small changes to an existing planning permission on the basis of a more limited application procedure. There will still, however, be requirements for consultation and for applications to be placed on the local planning register. This is a partial response to CPRE's concerns when this reform was proposed in the Planning White Paper (2007). The change does not affect the process of applying for planning permission.

Tree Preservation Orders (TPOs)

9. Sections 192 and 193 enable the Secretary of State to define procedures relating to TPOs through secondary regulations and to replace the procedures currently set out in primary legislation (the Town & Country Planning Act 1990). CPRE intends to engage in detail with the preparation of the new regulations.

Determination of procedure for called-in planning applications and appeals

10. Section 196 enables the Secretary of State, or the Planning Inspectorate acting on his behalf, to determine whether an appeal (planning, enforcement or listed building) is to be considered at a local inquiry, at a local hearing or on the basis of written representations. This power has to be exercised on the basis of published criteria. CPRE supports this reform. Although public inquiries allow for cross-examination of evidence which is often necessary in major cases (see 'examination of nationally significant infrastructure projects' above), evidence shows that the outcome of inquiries statistically tend to be in favour of well-resourced appellants. The draft criteria will continue to allow for inquiries to be held in controversial and/or major cases.

Community Infrastructure Levy (CIL)

11. Sections 206 to 225 enable the Secretary of State to introduce CIL by regulations. The Government began to develop CIL after deciding not to take forward the Planning Gain Supplement (PGS), proposed in the Barker Review of Housing Supply. Whereas PGS was designed as a national tax on the value of land gaining planning permission for development, CIL will be administered by those local planning authorities who wish to take it up.

12. Local planning authorities with a CIL scheme are required to set out charging rates in development plan documents, and will have to take into account the costs of infrastructure that the development plan identifies as necessary, as well as 'matters relating to the economic viability of development'. CIL will not, however, be a tax on increases in the value of land resulting from planning permission. There are also likely to be wide-ranging exemptions by type of development. Such exemptions will probably include development by registered charities, where CPRE supported calls from a host of other charitable organisations. We also called for wind farms to be explicitly liable for CIL as part of our campaign against 'goodwill payments' offered by energy companies in October 2008. Energy developments are also, however, likely to be exempt.

13. There are questions as to whether CIL will be taken up on a significant scale. This is partly due to the economy entering recession in late 2008, but mainly due to the likely reluctance of many local planning authorities to negotiate a charging schedule case by case, with property interests that are likely to keenly contest having to pay CIL.