

1. PLANNING (APPEALS): TEN MINUTE RULE MOTION

John Howell

12:38 pm, 4th December 2018

I beg to move,

That leave be given to bring in a Bill to limit the grounds of appeal against decisions on planning applications consistent with a neighbourhood development plan or local plan; **and** for connected purposes.

I am introducing this Bill to try to provide reassurance to communities who spend considerable amounts of time and money producing a neighbourhood plan that their work is valued, that it plays an important part in the planning system and the determination of planning applications, and that, together with the local plan produced by the district or borough council, it is a fundamental document.

I want to reassure those communities that neighbourhood plans are fundamental documents and that the effort made in producing them is worthwhile. In my own constituency, two more plans recently passed referendums by 94% and 98%, which shows how much they are valued by communities. The Bill would provide that, where a district or parish has taken control of the planning requirements in their area, that view is an important and determining one for taking applications forward.

I introduce the Bill having held the position of Government champion for neighbourhood planning. In that role, I have been around the country talking to groups of parish councils and their Members of Parliament about why they should produce a neighbourhood plan. I am grateful to the many colleagues—far more than the 11 supporter slots available—who have supported the Bill.

In my constituency, in a village called Sonning Common, the local community and district council are reported to have spent £90,000 defending the village's new neighbourhood plan against an appeal. The subject of the appeal was an application for 95 dwellings on a site located in the neighbourhood plan for just 26. Why the application was able to be taken to appeal is part of the reason for the Bill. The application was inconsistent with the Sonning Common neighbourhood plan and there were no mitigating circumstances. Local residents had worked very hard on the neighbourhood plan, and continue to do so. The question we have to ask is: why was the existence of the neighbourhood plan not sufficient?

In order to set the scene for the Bill, I will go back to what prompted me and the then Planning Minister, my right hon. Friend Greg Clark, to introduce neighbourhood plans in 2011-12. The starting point was the recognition that the previous system of taking parish views on applications into account by ticking one of three boxes was inadequate. The boxes were: "yes", "no" and "no firm opinion". As we live in a plan-led system, it was crucial that anything that replaced it was part of the plan-led system—hence a new plan, the neighbourhood plan. This has proved to be a much better way of crystallising local views of development.

The neighbourhood plan becomes part of the local development plan when it is approved at a referendum and thereby carries the full legal weight that the local plan does. It is not a nimby's charter. The plan needs to conform with the strategic objectives of the local plan, particularly the housing numbers, which should be seen as a minimum figure, and they have in practice allocated some 10% more sites than originally detailed by the district or borough council. About 2,500 communities around the country are producing a neighbourhood plan, and many have already passed a referendum with North Korean-style majorities. Nevertheless, despite the work of the local plan expert group, on which I served, to simplify the production of neighbourhood plans, the process is becoming more complex and time-consuming for ordinary people to carry out, and I pay tribute to the volunteers who spend so much of their time putting these plans together.

There is a bigger problem that the Bill seeks to address. Imagine a parish that has committed considerable money and time to producing a neighbourhood plan. It has been through the exercise of allocating sites. It may even have allocated more than it was told was appropriate by the district council. A developer wants to make a planning application that falls outside the neighbourhood plan. He makes the application. It is rightly refused as being not in accordance with the neighbourhood plan, yet he can still appeal to the Planning Inspectorate. That appeal will need to be defended. It will require vast amounts of time from the local people who put the plan together. It may require the services of a QC or other specialists, depending on the nature of the defence. As at Sonning Common, they and the district council may end up having to spend around £100,000 on defending it. Moreover, the chances of the neighbourhood plan being upheld are open to doubt. In other words, all that effort and all that money could be wasted. The question I am always asked is why, when we have a neighbourhood plan, should the developer be allowed to appeal?

How would the Bill work? Let me give three examples. First, we have the situation where there is a robust five-year housing land supply in place—or indeed, where appropriate, a three-year housing land supply—as well as a fully approved neighbourhood plan and local plan. In this case, a developer makes an application for development that is contrary to the neighbourhood plan and is earmarked for refusal on the basis of neighbourhood plan policy. The local planning authority first decides that the application is outside the plan, or contravenes a policy in it, and refuses it. It also makes a formal decision, which is published as a formal notice in the minutes of the planning committee, that the application is contrary to the neighbourhood plan: in other words, that the neighbourhood plan holds sway. In this instance the developer would have no right of appeal, because it would be withdrawn.

In the second case, there is still a five or a three-year housing land supply, but in reaching its decision, the local planning authority does not follow due process. It makes a decision in which there are processual errors. It is not possible to evaluate the significance or impact of those errors, and whether that would ensure that the decision could be overturned or whether it would make no difference at all. In this case, too, the finding of fact is that the application is contrary to a neighbourhood plan. The developer would have to make an initial referral to the court by way of judicial review of the processual issues, meaning that the bar for decision was a high one, and he would seek leave to appeal to the planning inspectorate. It would be for the court to review the processual errors rather than the issue of fact.

In the third example, there is no five or three year-housing land supply, but the local planning authority still refuses the application. In this case, the rights of the developer to appeal against the application to the planning inspectorate would continue as now. That would have a

number of effects. First, it would send a strong message to developers that neighbourhood plans are to be taken seriously. I am fully aware of one developer who has devoted considerable resources to undermining neighbourhood plans and regularly submits objections to local planning authorities. The issuing of a notice by the local planning authority makes it clear that there is a finding of fact that the application is contrary to a neighbourhood plan.

Secondly, only through such action will we return real democracy to the towns and villages of this country, as we originally envisaged in the Localism Act 2011. It will have no bad effect on housing numbers: as I have said, neighbourhood plans provide for some 10% more housing than originally envisaged. It could even make the allocation of land for more houses more attractive to towns and villages, because they will be protected from rapacious interests. Thirdly, it will give those towns and villages confidence that producing a neighbourhood plan is worthwhile, and will be seen as producing a determinant for the planning system.

Fourthly, this can be seen as another step in the reform of the neighbourhood planning system, which has adapted to changing circumstances throughout. First, there was the Barwell ministerial statement, which in certain circumstances reduced the housing land supply to three years. More recently, changes have been included to simplify the process for updating a neighbourhood plan.

Lastly, the Bill will encourage communities to prepare plans, including local district and borough councils, and to support neighbourhood plans. Our Local Plans Expert Group report quoted the then national planning policy framework, which states that plans should be

“the key to delivering sustainable development that reflects the vision and aspirations of local communities.”

However, we also commented that less than a third of the country was suitably covered. There are many examples of good practice in plan making; the Bill will add to that stock of good practice.

Question put and agreed to.

Ordered,

That John Howell, Sir Oliver Letwin, Sir Nicholas Soames, Sir David Evennett, Nick Herbert, Sir Geoffrey Clifton-Brown, David Hanson, Kevin Hollinrake, Gillian Keegan, Victoria Prentis, Damien Moore and Stephen Lloyd present the Bill.

John Howell accordingly presented the Bill.

Bill read the First time; to be read a Second time on Friday 25 January 2019 and to be printed (Bill 300).