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Public Bill Committee

NEIGHBOURHOOD PLANNING BILL

Fifth Sitting

Tuesday 25 October 2016

(Morning)

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Saturday 29 October 2016

The Committee consisted of the following Members:

Chairs: † Mr Peter Bone, Steve McCabe

† Barwell, Gavin *(Minister for Housing and Planning)*
† Blackman-Woods, Dr Roberta *(City of Durham)* (Lab)
Colvile, Oliver *(Plymouth, Sutton and Devonport)* (Con)
† Cummins, Judith *(Bradford South)* (Lab)
† Doyle-Price, Jackie *(Thurrock)* (Con)
† Green, Chris *(Bolton West)* (Con)
† Hayes, Helen *(Dulwich and West Norwood)* (Lab)
† Hollinrake, Kevin *(Thirsk and Malton)* (Con)
Huq, Dr Rupa *(Ealing Central and Acton)* (Lab)
† McMahon, Jim *(Oldham West and Royton)* (Lab)
† Malthouse, Kit *(North West Hampshire)* (Con)
Mann, John *(Bassetlaw)* (Lab)
† Philp, Chris *(Croydon South)* (Con)
† Pow, Rebecca *(Taunton Deane)* (Con)
† Tracey, Craig *(North Warwickshire)* (Con)
† Villiers, Mrs Theresa *(Chipping Barnet)* (Con)

Ben Williams, Glenn McKee, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 25 October 2016

(Morning)

[Mr Peter Bone *in the Chair*]

Neighbourhood Planning Bill

Clause 6

Further provision about statement of community involvement

9.25 am

Dr Roberta Blackman-Woods (City of Durham) (Lab): I beg to move amendment 12, in clause 6, page 5, line 27, at end insert

"in cases where the local authorities' statement of community involvement was regarded as inadequate."

This amendment allows the Secretary of State only to require planning authorities to review their statement of community involvement if they have failed to produce one.

It is a pleasure to serve under your chairmanship, Mr Bone. Clause 6 will enable the Secretary of State to make regulations to prescribe how and when a statement of community involvement is reviewed by a local authority. Amendment 12 would mean that the regulations only apply where there is some evidence that what a local authority is currently doing with regard to its statement of community involvement is inadequate. We want to do that for two reasons.

First, we are not sure what problem the Government are trying to fix with the clause. It would be helpful if the Minister outlined whether there is widespread evidence of local authorities not doing a statement of community involvement or not doing it properly. Secondly, and perhaps more importantly, we have some concerns about the Bill being a continuation of previous Bills on housing and planning that contain lots of centralising measures, giving the Secretary of State lots more power to get directly involved in what local authorities are doing. Of course, if I wanted to, I could say that this is part of what is actually an anti-localist strategy, not a localist one.

This might seem an innocuous little clause, but it sanctions a major interference from the Secretary of State in the everyday affairs of local authorities. However, if there is good reason for that—for example, if local authorities simply are not doing the job properly—we would want to look at it. We would need to look at why local authorities are not producing their statements of community involvement or why those statements are in some way inadequate.

From our discussions in this Committee and the evidence we have taken, we know that local authority planning departments are incredibly under-resourced. The British Property Federation's annual planning survey last year had 300 responses from planning departments. Some 86% of local planning authority respondents believed that under-resourcing of their departments was their most significant challenge and was really impeding them achieving the aims they had set themselves.

I will outline a scenario for the Minister. A local authority might have great ambitions in its statement of community involvement to be as inclusive as possible and to ensure that there is a regular review process in which local people feel they can be directly involved. However, if the local authority does not have the resources within its planning budget to achieve those aims and that great vision of local community involvement in planning, what is the statement there to do? These are the really stark choices that a lot of local authorities are having to face. Do they take money from the social care budget? Do they take money from their gritting budget, as we are about to go into winter? Where are they to get the additional resources from in order to have an up-to-date statement of community involvement and to make it really inclusive?

I am sure that is what the Minister wants the clause to achieve. He may correct me if I am wrong, but my reading of it is that rather than just having a statement of community involvement that sits there on the shelf with a tick box, as he will know, on the local plan documents—"We have done our statement of community involvement and been out there and talked to some community groups; that is done and we do not need to revisit it until we are doing some major revision to the plan or a new plan"—I am sure that the Minister wants this to be a much more living document with direct involvement from local people, and that he wants people to know how they can get directly involved and what the timetable is for reviewing it. That is the sort of engagement and involvement that we all want from our planning system, but that will not be achieved simply by putting a clause in the Bill. In particular, that will not be achieved by putting a clause in the Bill that simply puts more burdens on local authority planning departments, without ensuring that there is adequate resourcing for whatever the additional burden is.

It would also be helpful to hear whether the Minister has any idea what the Secretary of State is likely to prescribe in terms of the statement of community involvement and the timings of when it has to be subject to review. We have not yet heard from the Minister on this point and it would be useful to know how much of a burden is being placed on local authorities. I say "a burden" because at the moment I cannot see any way that they will be able to fund this.

That is not to suggest for a minute that Opposition members of the Committee do not think statements of community involvement are important. I am sure the Minister heard me say on Thursday that in drawing up a local plan, local authorities should start with the neighbourhood. They should start with the community and find out what people want. My experience is that, generally speaking, people are very good at knowing what their communities should look like for 20 or 25 years going forward, and if they are included in some of the Planning for Real exercises, or with Planning Aid, that can be a very helpful exercise for the local authority.

It is really important that communities are directly involved in drawing up their local plans. In fact, the Opposition are arguing that that should really be where local planning starts. We want local authorities to be able to have a very strong community involvement plan, but we also want to ensure that they have the resources

to do a really good piece of work and for it to be very meaningful, not only for the community but for the local authority as well. I look forward to hearing what the Minister has to say.

The Minister for Housing and Planning (Gavin Barwell): Mr Bone, it is a pleasure to serve under your chairmanship again. If this meets with your approval, I would be happy to talk to both the amendment and clause stand part.

The Chair: I am happy with that.

Gavin Barwell: The clause will ensure that no community can be left in any doubt about the ways in which they can participate in wider plan-making in their area. It will do that in two ways. First, it will introduce a requirement for local planning authorities to set out, in their statements of community involvement, their policies for involving communities and other interested parties in the exercise of their functions. Secondly, it will enable the Secretary of State to require authorities to review those statements. It will then be at an authority's discretion as to whether it is necessary to update it; if an authority is content that its statement does not need updating, it will need to publicise its reasons for not doing so.

Let me now try to address the points that the hon. Member for City of Durham raised about amendment 12. I hope we can all agree that in order for statements of community involvement to be effective, it is essential that they are reviewed and kept up to date. The hon. Lady asked for evidence that there is a problem, which is a perfectly reasonable question. During the summer, my Department undertook a review of local planning authorities' statements of community involvement, and found that a third were last updated before 2012—shortly after the introduction of the Localism Act 2011 and neighbourhood planning—and that 10% were 10 or more years old.

Clearly, a number of councils have not reviewed the statements since the entire world of neighbourhood planning came into being. I hope we can all agree on the importance of the communities that we have the privilege to represent having up-to-date information on how their local planning authority will support their ambitions. That is why it is necessary to legislate in this way.

The Bill will enable the Secretary of State to introduce regulations that require local planning authorities to review their statements at prescribed times. On 7 September, we issued a consultation in which we proposed that statements be updated every five years. We chose that figure because, as members of the Committee are aware, that is the existing expectation for local plans. Therefore, it makes sense to align those two things. The consultation closed on 19 October. It also sought views on proposals for an initial deadline of 12 months following Royal Assent for an initial review. The consultation provided an opportunity for authorities to comment on the implications for resourcing. I hope that reassures the hon. Lady in that regard.

There is consensus in the Committee that the issue needs to be addressed, but I felt that the hon. Lady overdid the case a little bit. I entirely accept that there is pressure on local authority planning departments and I went a long way to try to show what the Government's thinking might be on that. However—this goes to the point I made to the hon. Member for Bassetlaw in the previous sitting—despite the difficult period that local government has gone through over the past five or six years, local authority planning departments have generally done an amazing job in raising their performance in updating local plans and dealing with major applications on time. Perhaps I have more confidence than the hon. Member for City of Durham in local authority planning departments' ability to review a statement of community involvement in their existing budgets.

Dr Blackman-Woods: I would not want anyone to get the impression that we think that local planning authorities are not doing a very good job with limited resources. Nevertheless, my point was that statements of community involvement put particular expectations into the community because they see what involvement they are supposed to have. In some instances, that has a huge resourcing implication. Does the Minister accept that?

Gavin Barwell: I do accept that in so far as our constituents' heavy involvement in the planning system—in the preparation of local plans and the consideration of planning applications—can, in instances, create more work for planning officers dealing with particular situations. However, it might also save money in the long run because if a local plan enjoys broad support among a local community, a lot of the contention that can creep into our planning system down the line should be removed. I certainly regard—as I hope all Members of the House do—putting an effort into engaging our constituents in how the planning process works as a worthwhile investment that will pay dividends in the long run.

Let me explain one concern I have about the amendment. Whereas the Bill currently says that the statements should be reviewed—potentially on a five-yearly basis, if we proceed with what we have set out in the consultation—and does not seek to make judgments about the quality or otherwise of the plans, the amendment would ask the Government to make a judgment on whether they are happy with the plans put forward by an authority. That seems to be a more centralist measure than the Government's one. The Government are merely saying, "Councils can come up with their own statements. All we ask is that they are updated regularly." However, the amendment would ask us to make a judgment on the quality or otherwise of the statements.

In response to other points made by the hon. Lady, if I may say so—I do not want to start the proceedings on an off note after Thursday's consensual sitting—I thought it was something of an exaggeration to suggest that the power is a major interference in local government. It is simply asking councils to check that this important statement of how communities can get involved in the planning system is kept up to date. I do not think most people would regard that as a draconian, centralist measure.

I thought we had reached a consensus on this. We have a new shadow housing Minister and I have spent time reading some of the things he has said in recent months and years. One thing that really interested me in an interview he gave was that he acknowledged that the planning system had become far too centralised under the previous Labour Government, and he recognised

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that as a mistake. That may even be seen as welcoming the move towards the more locally, plan-driven system that we have seen under this Government.

Those who know me will know that my natural inclination is not to seek division. I quite like the fact that on several of the statutory instruments we have discussed, the Opposition have supported some of the things that the Government are doing. It is good if we can build consensus around these things.

Let me reassure the Committee that my starting point is that we should have a planning system that is locally driven through the development of neighbourhood and local plans. I see my role as purely intervening on occasion to ensure that things are kept up to date or compliant with the overall strategic national policy.

Dr Blackman-Woods: I have not had the opportunity to see the responses to the consultation paper, so it is not clear to us why 10% of councils have not updated their statement of community involvement for such a long time. That is a fairly low percentage but it would be useful to know what reasons were given in the responses to the consultation and when we might see the responses.

Gavin Barwell: I confess that I have not had the chance to read every single one of the consultation responses yet, either. I will certainly ensure that we publish a summary of those consultation responses as quickly as possible. The intention regarding the regulations is certainly to make them available as the Bill goes through its parliamentary process, so there will be plenty of opportunity for Parliament to scrutinise those regulations.

The hon. Lady focused on the 10% that are significantly out of date. I will check, but I think I said about a third since 2012. That is when the provisions from the Localism Act began to come into force. It is quite a substantial minority whose statements are not sufficiently up to date.

Jim McMahon (Oldham West and Royton) (Lab): I do not think it is right for us to assume the reason that those could be delayed, because planning authorities may have their own reasons for that. It is probably more likely that this is just a very pragmatic sequencing decision that has been made, where land supply and local plan reviews are taking place. It would be reasonable for a local authority to say in that context that neighbourhood plans would be sequenced in order to meet that timetable. It is far less likely that they just decided it was not important.

Gavin Barwell: I do not make any assumptions. I am sure it is not deliberate malice, if the hon. Gentleman would like that reassurance. None the less, given that there appears to be a strong consensus across the House that neighbourhood planning is a good thing, I hope we can all agree that it is disappointing if there is a significant minority of councils whose statements of community involvement do not explain to residents how they go about setting up a neighbourhood plan.

The hon. Member for City of Durham asked for evidence as to why we might want to require people to update regularly: that is the evidence. Whether the hon. Gentleman finds that compelling is up to him.

I will make one final point, very gently tweaking the hon. Lady's hair. She talked of the need not to put pressure on local authorities' resources and all those issues. I remind her of an amendment we considered earlier, where the Opposition sought to put more specific detail into the statements of community involvement, saying exactly how to set up a parish council.

To a degree, the two amendments point in different directions. On Thursday, the argument was that we should be more prescriptive about what goes into these statements. I think I said there was a strong case that such information should be covered but I was not convinced that we should include it in statute. Today it is argued, in support of an amendment, that it is a terrible major centralising measure that they should be reviewed every five years.

I would gently say to the hon. Lady that there is good evidence that these statements have not all been kept up to date, and that it is reasonable to require them to be reviewed, ideally every five years. However, as a national Government we should not get into the business of prescribing exactly what is in them or assessing whether we think they are good or bad statements. We should simply ask councils to keep them up to date. For that reason, I urge the hon. Lady to withdraw the amendment.

The Chair: Order. To be clear, we are now debating not only the amendment but clause stand part—we are doing both at the same time. I also remind Members that they are not restricted to speaking once; they may speak as many times as they like, if they catch my eye.

9.45 am

Dr Blackman-Woods: Thank you, Mr Bone.

The Minister made a point about consistency. The amendments that were tabled on Thursday—along with, indeed, amendment 12, although perhaps not so much the latter—are clearly probing amendments. It is the Opposition's job in Committee to test the Government's thinking. It is not what we are doing that is the subject of the Committee's scrutiny, but what the Minister is doing. Our amendments are merely about trying to get on the record further information from the Minister about what underpins some of the clauses in the Bill.

I was going to say that our discussion of clause 6 had been very helpful in getting on to the public record the Minister's thinking and the limits of the Secretary of State's involvement. I am sure that once the Minister has the chance to catch sight of the responses to the consultation, he will want to shape the regulations that will underpin the clause in the light of what has been said throughout the consultation process. Again, that was a useful exchange to have and it gave us a useful bit of information.

The Minister is welcome to go on discussing whether every single amendment we table in the Committee is mutually consistent, but I remind him that that is not the point of the amendments. Their point is to elicit from him further information. Because of the extra information I got from him this morning, I—along with, I am sure, my Opposition colleagues—would like to look at the outcome of the consultation and see whether the Government's response is indeed proportionate to the problem. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 6 ordered to stand part of the Bill.

Clause 7

RESTRICTIONS ON POWER TO IMPOSE PLANNING CONDITIONS

Dr Blackman-Woods: I beg to move amendment 15, in clause 7, page 6, line 7, at end insert—

"(1A) Regulations made under subsection (1) must make provisions for local planning authorities to make exceptions to conditions relating to matters set out in paragraphs (a), (b) and (c) of subsection (1)."

This amendment would ensure that there is a local voice and judgement taking into account local circumstances and impact.

The Chair: With this it will be convenient to discuss the following:

Amendment 18, in clause 7, page 6, line 12, leave out subsection (2)(a).

This amendment would ensure that "acceptable in planning terms" does not mean that conditions can be overlooked because they are unacceptable for other reasons.

Amendment 16, in clause 7, page 6, line 20, at end insert

"which must include consultation with local authorities."

This amendment would ensure that local authorities are consulted on the draft regulations.

Dr Blackman-Woods: Amendment 15 speaks for itself, and relates to the conditions set by the Secretary of State under proposed section 100ZA(1), which states that,

"(a) conditions of a prescribed description may not be imposed in any circumstances on a grant of planning permission for the development of land in England,

(b) conditions of a prescribed description may be imposed on any such grant only in circumstances of a prescribed description, or

(c) no conditions may be imposed on any such grant in circumstances of a prescribed description."

Those powers are given to the Secretary of State so that he or she will be able to add or take away conditions that are set by a local authority for a specific planning application.

I stress at the outset that this is very much a probing amendment. It seeks to elicit from the Minister whether there are any circumstances in which it might be necessary for local authorities to have an exception from a direction made by the Secretary of State requiring them to add or remove a particular condition. It would give councils flexibility to apply conditions that have been restricted by the Secretary of State, where they deem that necessary to address local circumstances.

The Local Government Association and councils have raised concerns that the imposition of certain conditions by the Secretary of State could reduce the ability of local planning authorities to include conditions necessary to address issues specific to a local area or an individual development that might not be clear to the Secretary of State.

Friends of the Earth has said that the provisions in subsection (1)(a), (b) and (c) of proposed section 100ZA are probably a step too far. It comes back to the point raised in amendment 12: the provisions give the Secretary of State substantial additional powers to interfere directly in conditions that might be set or deemed appropriate by the local authority.

I hope that the Minister can take us through some examples, because the Opposition are struggling to come up with a set of circumstances in which a Secretary of State would want to interfere in such a way, and to take the risk of something going badly wrong with the development because a condition that the local authority thought was important, but that the Secretary of State did not, turns out to have been very much necessary. I will discuss a couple of examples to see whether the Minister has thought about whether any exceptions should be made.

Let us imagine that a local authority wants a flood mitigation scheme in an area that traditionally has not flooded. Due to other developments elsewhere in the area, the local authority thinks that such a scheme might be needed for the longer term benefit of the site and its occupants. There might not be a good evidence base for such a scheme but, because the other developments are about to take place, there could be an impact on the site in future. The local authority might therefore take a cautious approach because it does not want future occupants to be flooded, or even to be at a higher risk of flooding. However, because there is no evidence base, that need might not be immediately apparent to the Secretary of State, who might water down or diminish the local authority's ambitions.

The Chair: Order. I am sorry to interrupt the hon. Lady in mid flow. Minister, you well know that you are not supposed to pass documents to officials.

Dr Blackman-Woods: Similarly, there might not be a particularly strong evidence base for additional traffic management works, but they might need to be undertaken if there are a number of developments in the area. Again, I suspect that would have to be carefully explained to the Secretary of State so that he did not remove a condition that developers could reasonably argue is not entirely relevant to their site, because it would be relevant when the other sites are added. The amendment probes whether there might be exceptions, because the clause does not specify.

I am also curious—the Minister will need to enlighten me on this—because we know that local authorities must set their conditions in line with what is already in the national planning policy framework. I am sure that the Minister will be pleased to know that I have looked at every clause in the NPPF that mentions conditions, whether planning conditions or other sorts of conditions. Actually, the provisions in clause 7(2) are already clearly outlined in the NPPF, and tight guidance is given to local authorities—we might look at this later—on the evidence they need in order to adhere to planning guidance. The NPPF tells local authorities clearly what they have to do in terms of planning conditions, and the planning guidance gives even more information, very helpful, on what they should do, but somehow the Secretary of State will decide whether they are abiding by the guidance—if that is the process he or she will go through—or abiding by the NPPF.

I am just not completely confident that by giving the Secretary of State the exact same guidance and policy, somehow everything will become okay with the application of conditions, particularly because local authorities work within a local context, whereas the Secretary of State does not. What reassurances can the Minister give

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us that that will work in practice? I think he will agree that this time significant additional powers are going to the Secretary of State. When will they be triggered and in what way?

I ask that because in our evidence sessions I asked both the Home Builders Federation and the British Property Federation what evidence they had that conditions were being applied in an unnecessary and whimsical fashion, or that local authorities were routinely setting conditions, particularly pre-commencement conditions. I have to say that they did not break it down into pre-commencement conditions and conditions that relate to the ongoing development itself. Nevertheless, let us look at what they said and assume that it was at least partly about pre-commencement conditions. They said that they had evidence that builders were experiencing problems with pre-commencement conditions but could not give any examples. That is what I find worrying about the premise underpinning the clause, particularly the additional powers given to the Secretary of State in proposed section 100ZA(1).

10 am

It is not apparent to us what problem the clause is intended to fix. There is very little evidence to support the view that developments are being held up because of the application of pre-commencement conditions. The BPF at least helpfully referred to a survey; the HBF admitted that it was relying more or less on anecdotes from builders, particularly some of the larger builders, who said that pre-commencement conditions were unnecessary, put undue burdens on large house builders and were holding up developments, so the Government must do something. When I questioned them in our oral evidence sessions, what I got back were the opinions of certain developers, not those of any experts.

Kevin Hollinrake (Thirsk and Malton) (Con): Has the hon. Lady spoken to some of the small developers in her constituency? I have certainly spoken to some in mine, and they, too, cite pre-commencement conditions as critical to their ability to get a speedy resolution to planning applications.

Dr Blackman-Woods: I was just about to come to the Federation of Master Builders, which looks after smaller builders; I was dealing with the HBF first because it tends to deal with the volume builders. We heard in oral evidence the opinion of some of the volume house builders, although we did not get from the HBF any examples of what types of conditions were proving problematic.

Kevin Hollinrake *rose—*

Dr Blackman-Woods: May I finish responding to the previous intervention? To answer the hon. Gentleman's second point, I talk to the small home builders—in fact, builders generally—in my constituency a lot. When we are looking at evidence, we have to look at it really carefully. Builders will often say to me, "We have to do a bat survey"—it is usually a bat survey, but occasionally a newt survey. Sometimes I ask them how long it takes and they say, "Well, it depends on the time of year, so it can be a bit problematic." Generally, though, something has been done locally that they can tap into. Bats are usually the worst, but if we can find a way to deal with that without it being too onerous, perhaps such a drastic clause would not be necessary.

Kevin Hollinrake: The hon. Lady mentions bat surveys. In September, one of my constituents was required to carry out a bat survey on a building that was due to be demolished. When it came to granting planning permission in December, the planning officer decided that there were no bats around in September so they would have to wait until May to do the survey again. Having carried it out once, they had to wait until the bats came back to see whether any bats were there in the first place. The hon. Lady asked for specific examples. A small developer was asked for a landscaping scheme before he was allowed to start building the houses, and that was not in a conservation area. These things clearly are an issue. We cannot just reject out of hand the fact that they are causing problems.

Dr Blackman-Woods: I would like to reassure the hon. Gentleman that we are not dismissing those examples out of hand. My first point is that we are struggling to find examples. My second point is that, when we find examples, we have to decide whether they should be dealt with under a particular clause, such as clause 7, or whether we should find some other way of minimising the impact on the conditions set by the local authority.

The only example that the FMB was able to give us was of landscaping. However, landscaping is often what makes what might be a non-acceptable development acceptable to the local community. Communities want to know at the outset what a development will look like in the end, as the hon. Member for Thirsk and Malton must know from his constituents—I know it from mine. If a building has an unsightly façade or a high wall, or if there is something that people are unhappy with, they will ask at the earliest stage, "What sort of screening will there be so that we don't have to look at that ugly edifice?" Far from landscaping being a good example for the hon. Gentleman, it actually helps our case. He and builders might think that pre-commencement conditions are unnecessary, but our constituents think that they are really important.

Gavin Barwell: It is undoubtedly the case that our constituents are interested in what schemes will look like. Does the hon. Lady at least accept that requiring a developer to set out all that detail before a single shovel goes into the ground slows down house building? She might think that that is a price worth paying, but does she accept that point?

Dr Blackman-Woods: The Minister will have to bring forward evidence to show that it will slow down house building. If landscaping makes acceptable to a local community a development that it would otherwise find unacceptable, it might no longer object to an application, in which case the condition could speed up development, rather than slowing it down.

Jim McMahon: I refer the Committee to my entry in the Register of Members' Financial Interests—I should have mentioned earlier that I am a member of Oldham Council.

I struggle with the idea that asking developers to produce a landscaping plan is onerous. We are not talking about amateurs. When developers employ an architect to design a scheme, it is not that difficult to overlay it with a landscaping plan. The point has been made that, for a lot of people, that plan is the difference between whether a development is acceptable or not. That is not just because it can provide good screening but, importantly, because it forms part of the character of the locality.

We should all be trying to promote good development and good design in good context. Removing the conditions would not really help towards that. I can think of loads of planning schemes where really good landscaping design has added value. It has been good for the community, for the developer—which was able to get a premium on those properties—and for the people who live in the development, and it does not actually take that much time.

I struggle because—I wonder whether my hon. Friend agrees with me—we are just talking about planning. If developers are professionals, they will get their ducks lined up—or their bats—and ensure that they have the surveys in place. If they are refurbishing an old barn or building, they know that those things are needed and should just crack on and get them done.

Dr Blackman-Woods: My hon. Friend makes an excellent point that is pertinent to our discussion.

Chris Philp (Croydon South) (Con): The hon. Lady is very kind to give way, and it is a pleasure to serve under your chairmanship, Mr Bone. In response to the suggestion made by the hon. Member for Oldham West and Royton, if one requires developers to do all the surveys before the application, and the application is then declined by the local authority, the developer will incur significant costs to no purpose. That may prove prohibitive, particularly for smaller developers. What is her view on that?

Dr Blackman-Woods: I am sure the hon. Gentleman knows that local authorities approve nine out of 10 planning applications. It would be a rare event for such a detailed plan to come forward to a local authority without the developer knowing that it was breaching local planning policy. That is what must be happening if the application is rejected. That is not a very usual occurrence these days.

If the hon. Member for Thirsk and Malton and the Minister are serious about speeding up development, they might want to look at the outcome of the FMB's house builders survey 2016. One would assume, from reading the Bill, that the major problem in bringing forward development was pre-commencement planning conditions. However, when the small house builders were asked what was the biggest problem, they said it was the lack of available and viable land. That was the most commonly cited barrier to increasing output. We have to look right at the back of the survey, to a few specific questions on planning, to find any mention of planning conditions, and even then they were not the biggest problem; the biggest problem was the inadequate resourcing of planning departments. I hate to say that again and reinforce the message, but we are not the ones saying it; it is the small house builders.

Land is the biggest problem by far, and pre-commencement conditions do not come anywhere near that. Within planning itself, the biggest problem is the resourcing of planning departments—and that comment came only after prompting. They do not mention the setting of planning conditions at all; what they mention is sign-off of planning conditions. That seems to be a very different issue that they are raising. They are not raising an issue about the nature of pre-commencement planning conditions, or whether those conditions are appropriate. What they say in the text is that they could be signed off more quickly and that might help. Why are they not signed off more quickly? It is because of a lack of resourcing for local authority planning departments.

That was the only survey brought to our attention. I searched and found no other evidence, apart from the opinions of some of the larger volume builders. Giving such additional powers to the Secretary of State with no solid evidence base does not seem a very sensible way forward.

Some clauses in the Bill do not have the worrying aspects attached to them that this one does. If the effect of clause 7 is to restrict conditions that are set on developers, that could have a real impact on the community—not only on those who will ultimately occupy that development but on the neighbourhood. That is why we are so concerned about clause 7. We do not think it is necessary; we have not seen the evidence base. If the Bill is to contain such drastic measures, which could have real impacts on the areas that we all serve and represent, we need to hear something from the Minister.

Amendment 18 seeks to amend clause 7 so that if a condition cannot be enforced by the Secretary of State to make the development acceptable in planning terms, it makes the development unacceptable in other ways. Proposed section 100ZA(2) states:

> "Regulations under subsection (1) may make provision only if (and in so far as) the Secretary of State is satisfied that the provision is appropriate for the purposes of ensuring that any condition imposed on a grant of planning permission for the development of land in England is...necessary to make the development acceptable in planning terms".

10.15 am

What if the restriction makes the development acceptable in planning terms, but makes it unacceptable in social, economic or environmental terms? The Minister might say he cannot envisage the circumstances in which that would be the case. However, the flood alleviation measures that I mentioned earlier could be restricted because a development might be acceptable in planning terms but unacceptable in terms of environmental issues or concerns that the local population might have.

Gavin Barwell: Many of the things that might be covered by social, economic or environmental concerns are absolutely central to the planning system. I want to check that the hon. Lady is not suggesting that councils should be able to consider things that are not material planning considerations when dealing with planning applications.

Dr Blackman-Woods: I am happy to answer the Minister's question, but I am trying to find out what the Minister thinks about this particular subsection. Has he thought through a set of circumstances in which adding or removing a restriction or adding or removing a condition would make something acceptable in planning terms, but might have unforeseen consequences somewhere else? I am just giving the Minister an example because there could be environmental concerns. I suppose there are a lot of examples when we think about it. The removal of trees might be allowed under this clause, because that would be acceptable in planning terms, although I am not sure why it would be acceptable. There might be ongoing environmental or even social issues arising from that.

If we come back to the traffic measures, there is the issue of the roundabout. Traffic measures could be applied to make a development acceptable, and there could be absolutely dreadful issues for the local community in terms of air quality because of the requirement to make the development acceptable in planning terms. So the amendment is very much probing like amendment 15. We are trying to find out what this is all about in actuality. How will it work in practice? What sort of conditions might be set or removed by the Secretary of State? What is the impact of the decisions made by the Secretary of State and how will proposed section 100ZA(2)(a), (b) and (c) work in practice?

I will now move on to discuss amendment 16, which is innocuous and quite helpful. It simply asks for some consultation with local authorities when regulations are being drawn up. I actually thought this might be a helpful amendment for the Minister because, as we have already explained, we clearly have some difficulty understanding and finding an evidence base to support what is in clause 7.

If these regulations are to do the job that the Government want them to do—transfer powers to the Secretary of State, so that he or she can apply conditions or take conditions away—presumably they want the regulations to work in practice. These regulations really impact on the work of local authority planning departments, and local authority planning officers will be the people to know whether this clause is going to produce anything helpful or not in practice. It seems entirely reasonable that there would be a particular role for local authorities to contribute to the drawing up of the regulations, so that they are proportionate, and that the way in which the Secretary of State can interfere should be proportionate to the problem that the Government have identified.

I say that because nobody else seems to have identified pre-commencement conditions as a problem, but clearly the Minister thinks they are and some of his colleagues seem to think they are. All that we ask is that a very sensible approach is taken to local authorities, and that rather than simply having a set of regulations imposed upon them, which may or may not work in practice, they are involved in the process. Then, hopefully, we will get something commensurate to the problem and not a whole-scale transference of powers to the Secretary of State. I look forward to hearing what the Minister has to say.

Helen Hayes (Dulwich and West Norwood) (Lab): It is a pleasure to serve under your chairmanship, Mr Bone. I have listened to evidence from both the development industry and local authorities both as a member of this Committee and as a member of the Communities and Local Government Committee. Although there are some examples, which have been much quoted, of the excessive use of pre-commencement planning conditions, the evidence is really not very strong. There are many reasons why the measures proposed in clause 7 are, in fact, an attempt to treat the symptom of a problem rather than the cause of that problem itself.

When asked, and when I have questioned them, all the witnesses—pretty much without exception—who have spoken about pre-commencement planning conditions have acknowledged, and in some cases spoken extensively about, the constraints on local authority planning departments. As we know, planning is the second most cut area of local authority services since 2010. It is an area that has, for good reason, lost out in the competition for local authority resources between it and statutory services such as children and adult social services, which affect some of the most vulnerable in our communities. To my mind, that is because the funding of planning, and in particular development management, is not on an appropriate footing.

I was very disappointed and frustrated that the previous Housing and Planning Minister simply ignored this issue during the debate on the Housing and Planning Act 2016, and did not acknowledge that we needed well-functioning, properly resourced planning departments to facilitate the building of the new homes that we need. It is absolutely not right that planning should be competing with services that are needed by the most vulnerable in our communities, and therefore we need a different way of funding planning departments.

Kevin Hollinrake: How will extensive pre-commencement conditions that are difficult to discharge help with that process? Local authorities will choose where to resource their departments. The pre-commencement conditions simply increase the burden on planning officers.

Helen Hayes: If the hon. Gentleman bears with me, I will explain exactly how that part of the argument hangs together.

There is evidence that officers are currently using pre-commencement conditions because they are simply unable to resolve every aspect of the planning application before the deadline for making a decision. In some cases, they are unable to look in detail at all the documents submitted as part of a planning application. In some cases, they are unable to spend the time negotiating and discussing with the applicant the type of detail that might be necessary. There is no question but that that is clearly not acceptable practice. Some have referred to that as lazy conditioning, but I would argue that it is, in fact, more commonly a symptom of the problem of under-resourcing, rather than deliberately poor practice.

When faced with the threat of appeal on the grounds of non-determination, local authorities and individual officers will look to use conditions as a way of making a timely decision to avoid losing control of every aspect of that planning application to the Planning Inspectorate. That is an entirely rational way for authorities to behave, rather than taking the risk of losing an appeal on the grounds of non-determination.

Gavin Barwell: I very much welcome the hon. Lady's speech, because she is admitting that there is a problem and that the pre-commencement conditions are being abused. She believes that the reason for that abuse is that local authorities are under-resourced. That is exactly what she just said. Would not the right solution be to stop that abuse? That will do one of two things. It will show either that it is all about resourcing—the proportion of applications approved in time will drop dramatically—or that there is a problem. Either way, it will stop the abuse and reveal the true problem.

Helen Hayes: I am arguing, first, that the scale of the problem is not nearly as great as the Government say, and secondly, that where there is a problem it is a symptom of the lack of resourcing in planning departments—the primary cause of that problem—not a problem in its own right. Therefore, the Government should be directing their energy towards the resourcing of local planning departments. I have argued many times that local authorities should be able to recover the full cost of resourcing and development management services through the fees they charge for those services. That proposal has broad support from the development industry, local planning departments and the organisations that represent local government in London and across the country. It would be a far better place to start the debate than clause 7.

As we have heard from many witnesses, there are circumstances where pre-commencement conditions are welcomed by developers, and where there is flexibility to agree some details when finance has been secured on the basis of a planning application, or when more is known about the site due to site investigations that take place in the earlier stages of a scheme. Last week, I sat down with several representatives of the local community and a developer who is bringing forward a very sensitive scheme in my constituency. The planning permission for the site in question was a detailed consent secured by a previous landowner who used that consent to sell the site on; that was a controversial issue in its own right.

Last week we met the developer, which did not take part in the planning application process for the site that it has now inherited. In that case, there are pre-commencement conditions on materials and archaeology. It is entirely right and proper that the developer has the opportunity to consider those conditions and make proposals to the local authority for those conditions to be discharged before development commences.

Chris Philp: In the hon. Lady's example, did not the new owner have ample opportunity to consider those pre-commencement conditions before the purchase of the site? If they did not like the conditions, they could simply have not purchased the site.

Helen Hayes: That is a rather blunt and not nuanced enough understanding of how such things work in practice. Last week, the developer met with the community—a vociferous community who feel very strongly about the site. That conversation will enable the developer to inform the discussions and plans for some important detailed aspects of the scheme. That is entirely the right order of things. It would not have been appropriate for the developer to speak to the community ahead of securing the purchase of the site; the developer would not have had a relationship with the community that allowed such a conversation. The way that things are progressing is entirely right and timely; it is not leading to any delay in bringing forward the site in question.

10.30 am

The clause simply does not reflect my experience of the planning system. The ability to agree conditions and attach them to a consent is often critical to addressing public opposition to aspects of a scheme, giving reassurance to a community that its concerns have been heard, listened to in detail and addressed through the planning system, and therefore enabling a timely decision to be made.

Dr Blackman-Woods: My hon. Friend is making a series of important points, which are helping us to understand pre-commencement conditions more thoroughly. Does she agree that the provisions in the clause will in fact make communities much more anxious about possible development in their area? The local authority may set conditions that will make a particular planning application acceptable and then find some way down the line that those conditions have been removed by the Secretary of State.

Helen Hayes: My hon. Friend is exactly right. It is so important that the voices of local communities are heard, particularly given the volume of development that is needed to deliver the new homes that we need in this country. Conditions are one way that a local authority can broker and establish a relationship between applicant and community and the genuine and material concerns that our constituents all have about development can be taken into account and addressed. Communities will find ways for their voices to be heard. If the planning system excludes those voices and makes those negotiations much more difficult, those voices will be heard in other ways: there will be an increase in applications for judicial review of planning applications and much more in the way of petitions, protests and attempts to frustrate development. It is right that the concerns of local communities are heard and addressed through the planning system.

I further take issue with the clause and support the amendments in the name of my hon. Friend the Member for City of Durham because it simply does not reflect or encourage good practice. It is widely acknowledged—the Committee has heard evidence from experts across the sector about this—that best practice involves applicants and planning authorities, having undertaken appropriate public engagement and consultation, coming together to agree what is necessary for an application to meet policy requirements in relation to a given site.

Members on the Government side of the Committee have made the point that there is cost and risk for applicants in taking applications through the planning process. That risk is mitigated and minimised when applicants fully understand and take into account the policy context and do everything possible to ensure that their applications are policy-compliant. To suggest that local authorities are in the business of refusing planning applications on a whim in a policy vacuum misrepresents what actually happens. In the case that a local authority makes a flawed decision, it is open to the applicant to appeal, and such appeals will succeed.

Kevin Hollinrake: Is the hon. Lady not arguing for the clause? She talks about best practice and engaging with the applicant and the planning authority to agree the way forward rather than unilaterally sticking in some pre-commencement conditions without discussing those with the applicant. Is that not exactly what the clause will do?

Helen Hayes: It is my view that a clause that requires an exchange of letters and makes agreement to the principle of pre-commencement conditions the preserve of the applicant rather than the local authority does the opposite. It does not encourage best practice; it encourages a much more litigious and formalised approach to negotiation, which does not allow for genuine engagement between applicant and planning authority. It would be far better to resource planning authorities properly to undertake those detailed discussions with applicants, so that they can agree and discuss the issues that are important to local communities and ensure they are properly addressed, with as many as possible being within the planning permission itself rather than within pre-commencement conditions. However, there is a role for pre-commencement conditions and it is a very important one.

Finally, we should remind ourselves of what pre-commencement conditions seek to achieve and why they are important. Conditions cover many aspects of application, such as the choice of materials, which is sometimes belittled as a trivial matter but is in fact so important in determining the impact that a new development will have on a community in the long term. Once something is built, it is there certainly for the rest of our lifetimes and perhaps those of future generations. What a development looks like, the impact it has and how sensitively considered the materials are plays a really important role in how acceptable it is to the local community.

Conditions also cover issues such as sewerage capacity, which influences whether residents will have serious problems, sometimes in their own homes, in the long term. They are a key means by which local authorities can safeguard the interests of local communities and ensure the quality of new development. Of course, they should not be overused or misused, but where that occurs it is a symptom of the lack of resources rather than wilful misuse or poor practice.

I argue that the setting of conditions should be the preserve of democratically elected local authorities, not contingent on the agreement of the applicant. Local authorities must be properly resourced to undertake pre-planning discussions, to review properly the content of applications and to agree as much as possible within the framework of the planning permission itself, in order to minimise the use of conditions. The clause is simply misdirected. It is trying to treat the symptom of a problem, rather than the cause. I hope the Government will therefore reconsider it.

Mrs Theresa Villiers (Chipping Barnet) (Con): It is a pleasure to take part in this Committee under your chairmanship, Mr Bone. I have what amounts more to an intervention than a full speech. I spoke about this clause on Second Reading and received some useful reassurance from the Minister, but now we have the more relaxed circumstances and timings of a Committee, I would like to reiterate broadly the importance that many of my constituents place on matters relating to the protection of habitats—that includes bats and newts—and landscape and flooding.

It would be helpful if the Minister expanded on his remarks on Second Reading to explain how it will still be legitimate for the planning process to consider such matters and how there will still be opportunities for local authorities to require research to be done into them, so that planning permission can be granted on the basis of full awareness of the facts. While the clause as drafted will help streamline the planning process, it must leave planning authorities with the ability not only to take matters such as habitats into account, but to require developers to provide the appropriate surveys and research. Will the Minister explain at what stage that is still open to the planning authorities? I am sure my constituents would be very grateful for that.

Gavin Barwell: I should say at the outset that the three amendments we are debating do not deal with the pre-commencement and application issue. We have rather drifted into a clause stand part debate, but I will try to respond to all the points colleagues have made.

This is probably the moment in the Bill when there is the strongest disagreement between the two sides of the Committee. Let me start on a consensual note. The hon. Member for City of Durham asked me to accept that this was a wide-ranging power, compared with the one in the previous clause, and I do accept that. The Government have sought, in drafting the legislation and in some of the other things we have done, to provide as much reassurance as possible.

We have put two provisions in the Bill that it might be helpful to clarify at the outset. The clause does two things: it gives the Secretary of State the power to prescribe certain types of planning condition, and separately it requires that pre-commencement planning conditions may only be made with the agreement of the applicant. So there are two different issues, and the amendments we are considering deal with the first part of the clause. We will come to the amendments that deal with pre-commencement later. It might be helpful to the Committee to put that on the record.

On the Secretary of State taking the power to prescribe certain types of conditions, I can offer three pieces of reassurance to the Committee. First, the Bill makes it very clear that the Secretary of State may use that power only to back up what is in the NPPF—the basic tests are written into proposed section 100ZA(2), which is inserted in the Town and Country Planning Act 1990 by the clause. One of the amendments deals with those four tests, which I will come to later. Secondly, proposed section 100ZA(3) makes it clear that the Secretary of State, before making any regulations, will have to carry out a specific consultation on them, so each time the Secretary of State seeks to use the powers under proposed section 100ZA(1), there will have to be a public consultation. That is written into the Bill to provide reassurance about how the power is to be used. Thirdly, when we published the Bill, we also published a consultation paper setting out how we believed that we would want to use the powers, were Parliament to grant them to the Secretary of State. I will refer to that consultation paper later on in what I have to say.

The point of principle is the point of difference, so let us start with evidence. I would argue that there is a lot of evidence to show that there is a problem, but first I point out that the Opposition have fallen into one of the traps that has bedevilled the housing debate in this country for 30 or 40 years—a trap into which many of the people who have come into my office over the past three months have also fallen—and that is to set out an either/or choice.

For the first two months that I was doing this job, I asked everyone, "Why do we not build enough houses in this country?" People would reply, "It's all the planning system's fault," or, "It's all down to the major developers, who are banking huge chunks of land. If they released those, we wouldn't have a problem." Some people came into my office and said, "Do you know what? It is impossible for people nowadays to own their own home. We should just give up on home ownership and put all the focus of housing policy on renting," but others say, "There has been too much focus on renting. People want to own their own home. Everything should be about helping people to own their own home." I believe such choices to be completely false.

Dr Blackman-Woods *rose—*

Gavin Barwell: If the hon. Lady allows me to expand the argument, I will be happy to allow her to intervene.

The reasons why we do not build enough homes in this country are complicated. Lots of things work, but if the answer were simple my predecessors would have solved the problem. There is no silver bullet and no one thing that will solve the problem, which instead will require a complex web of policy interventions.

Helen Hayes: Will the Minister give way?

Gavin Barwell: To say that there is a problem with local authority resourcing of planning departments, which I think everyone on the Committee has accepted, and that therefore that is the sole problem and we do not need to worry about anything else, is to miss the point completely. There are a lot of reasons why there are problems in our system. We need to take action to deal with all those things, not simply say, "This is the main problem, so we should solely deal with that and forget about the rest." I will now happily take the interventions.

Dr Blackman-Woods: I want to challenge the Minister's characterisation of what the Opposition think about why in this country we are not building as many houses as we should. I know the Minister knows that that characterisation is not fair, because he has read the Lyons review; I know that because he and his predecessor have been cherry-picking bits out of it and bringing them forward in Government policy. It was a wide-ranging review, which looked at a whole set of different reasons why we do not build enough houses—everything from land availability to the failure of the duty to co-operate, to the inadequacy of the local plan-making system, and so on. I hope he and the rest of the Committee will understand that the Opposition do indeed know that the problem is multifaceted. This morning, however, we are simply arguing about this group of amendments, and saying that we do not think that pre-commencement planning conditions are the major issue that he sets them out to be.

Helen Hayes *rose—*

10.45 am

Gavin Barwell: If it is helpful and the interventions are on the same subject, I will take both before responding.

Helen Hayes: I want to make two quick points in response to the Minister's remarks. There might be multiple causes of the issue that the clause seeks to address in relation to the use of pre-commencement planning conditions, but as my hon. Friend has argued, we do not believe there is evidence that this is a primary cause of the problem. We believe the primary cause is the under-resourcing of planning departments, and Government Members acknowledge the extent of that problem. Will the Minister explain why there is nothing in the Bill that addresses that problem?

My second point relates to the remarks made by the Minister about housing. I welcome his acknowledgment that renting and the affordability of housing are part of the problem. His predecessor took an entirely binary approach to housing: he put all of the Government's resource into home ownership and did not recognise that nuance at all. If the Minister is thinking of changing direction, that would be welcome.

Gavin Barwell: On the latter point, if the hon. Lady were to look back at some of the things I have said over the period that I have been Housing Minister, she would find that those signals have been loud and clear. A White Paper is coming shortly. I do not want to add any more on that point, but on the resourcing point, other members of the Committee will say that I was pretty clear about where I stood last Thursday. On the question about why there is nothing in the Bill, some things do not need legislation to fix them. There is a White Paper coming out. I have to be careful, but the Government have consulted on the issue of whether we need to get more resourcing into local authority planning departments. The results of the consultation were clear, and the Government will reflect on them.

I was glad to hear the comments of the hon. Member for City of Durham. I will come to the evidence on this point, which is where we should concentrate our debate, but I would observe that the modern Labour party, which is a rather different creature from the one in the late 1990s when I was getting involved in politics, seems to find it easier to recognise problems when the private sector is involved and is more reluctant to recognise problems when the public sector is responsible.

Let us turn to the question of evidence. Knight Frank's house building report 2016 refers to

"the need to address the increasingly onerous levels of pre-commencement conditions applied in some planning permissions and the length of time taken to sign them off."

Crest Nicholson's half-yearly report 2016 states:

"Speeding up the clearance of pre-start planning conditions and securing sufficient labour resources to deliver growth plans"

remain the two challenges to delivery.

The Persimmon annual report states:

"Whilst planning-related pre-start conditions continue to increase the time taken to bring new outlets to market, we are pleased to have...opened 60 of the 120 new outlets planned".

[Gavin Barwell]

I referred on Second Reading to a survey done by the National House-Building Council in 2014, which showed that a third of small and medium-sized builders identified planning conditions as the largest constraint to delivery. Specifically, the two questions were about the time taken to clear conditions and the extent of the conditions.

Helen Hayes *rose—*

Gavin Barwell: The hon. Lady asked for evidence; I am giving it. The time to clear conditions was mentioned by 34% of respondents and the extent of conditions was mentioned by 29%.

The District Councils Network—local government, not developers—stated, in its submission to the Committee:

"The DCN has acknowledged that the discharge of planning conditions can be a factor in slow decision making and supports the government in seeking to address conditions."

The hon. Member for City of Durham referred to a survey, but did not give the issue the prominence that it has in the survey. The planning system was identified as the second biggest challenge to small builders—tied with finance and behind the availability of land. The Government will be addressing all three issues. Among those commenting on planning difficulties, the signing of conditions was the second most cited challenge, behind the resourcing of planning departments, and the Government will be addressing both of those things.

The speech by the hon. Member for Dulwich and West Norwood was commendable. She acknowledged the abuse of pre-commencement conditions. Her explanation for it was not that local authorities were being lazy, but that there was a resourcing issue. I think the words she used were that people just did not have time to read planning applications, so they slapped pre-commencement conditions down. That clearly is not right, so the Government are absolutely justified in taking action in that area as well as looking to address the resourcing issues that she rightly identified.

Helen Hayes: The example I referred to was one that we heard in evidence to the Committee. It was an example of a landscape strategy having conditions despite having been submitted with the planning application. That practice is of course completely unacceptable, but it is, along with many other things, a symptom of the lack of resourcing.

More than half of the evidence that the Minister has just provided related to concerns about the signing off and discharge of pre-commencement planning conditions, not the setting of conditions themselves. If that is, indeed, a problem, as it would seem to be from the Minister's evidence, I ask once again why the Bill is dealing with the symptom of a problem rather than the cause. Why does it contain nothing to deal with the issue of the discharging of planning conditions, and instead deal only with the setting of pre-commencement planning conditions?

Gavin Barwell: I have tried to answer that question already. Some of those things do not require legislation. There are problems in our house building system that require policy changes, and others that require legislative changes. We want to pursue a range of solutions encompassing both those options.

I want to pick up on three specific examples that we were given of pre-commencement conditions, one of which may help to provide my right hon. Friend the Member for Chipping Barnet with the reassurance she sought. I thought that the three examples delineated very well the difference between the two sides of the Committee on this issue. One example related to archaeological concerns. Clearly it is entirely appropriate to address those through a pre-commencement condition. If there are concerns that the moment someone gets on site and starts to do ground works they will destroy a key archaeological site, the issue has to be dealt with by a pre-commencement procedure.

The other examples concerned the use of materials and landscaping. I, and I am sure all members of the Committee, would accept that those issues are legitimate ones that communities would want to address through the planning process. However, I do not accept that they must be dealt with before a single thing can be done on site, as the development begins to get under way. There is no reason why they cannot be dealt with during the process.

The hon. Member for Oldham West and Royton made an interesting intervention in which he said that it is all very simple if—I will take care not to use unparliamentary language—one gets one's ducks lined up. He said that people need to do all the work at the outset, come to the planning committee with everything sorted out, and then away they go. However, not only does that expose applicants to extra expense before they get planning permission, as my neighbour, my hon. Friend the Member for Croydon South, said, but it delays the process. The point that I am trying to get the hon. Member for City of Durham to accept is that, particularly with a large application, a huge amount of work must be done to get to the point where the applicant has satisfied all the legitimate concerns a community might have about it.

If, as I passionately feel, there is a desperate need to get us building more houses as quickly as possible in this country, surely anyone who has ever had any experience of managing a large project will think it is better to deal up front with the things that must be dealt with up front and then, while work is beginning on site, deal with some of the other issues that need to be dealt with. If we want housing to be built more quickly, we must allow developers to proceed in that way and not say that they must get every single thing sorted out before they can even turn up on site and begin vital work.

Dr Blackman-Woods: The Minister is in danger of presenting a bit of a caricature. It is not a question of absolutely everything being presented up front; it is a question of what is needed to be able to assure a planning committee and the community that a development is acceptable. If the Minister is serious about speeding up development, we know that the major problem with pre-commencement conditions is signing them off, so if he wants to address that it must be by further resourcing of planning departments, not by the removal of conditions.

Gavin Barwell: Again, the hon. Lady falls into the either/or trap. Both those things are problems. It is a problem both that the conditions are overused and that when they are legitimately used it can often take too long to sign them off. We are going to deal with both problems.

Chris Philp: Will my hon. Friend give way?

Gavin Barwell: I will give way once more; then I want to look at the specific example of flooding, talk about the consultation document and discuss the amendments.

Chris Philp: I have a genuine question on which I should be grateful for the Minister's thoughts. If we proceed as per the clause as drafted, and the applicant has to agree in writing to the pre-commencement conditions, what if the applicant—the developer—unreasonably refuses to agree to any of the pre-commencement conditions, in order to frustrate them? What would happen in that circumstance?

Gavin Barwell: I am sure that my hon. Friend never asks anything but genuine questions. The answer is very clear. In those circumstances, the local authority would be able to refuse permission for the development. If the pre-commencement condition that the applicant sought to resist was an entirely legitimate one of the kind we have already discussed, and if the applicant appealed, the Planning Inspectorate would turn down their appeal.

Chris Philp: Just to be clear, any condition that a local authority feels strongly about has to be imposed as part of the main planning condition. It has to accept that anything that it does not put into the main planning condition, it cannot subsequently impose.

Gavin Barwell: Pre-commencement conditions must be agreed with the applicant. If the applicant is not willing to agree to a legitimate condition, without which the authority does not feel the application would be acceptable, the application should be refused. The authority absolutely has the right to refuse such an application. I put it on record that I expect the Planning Inspectorate to back up the decisions of local councils when it judges that such a condition is perfectly reasonable to make a development acceptable. I hope that any developer silly enough to play those games will quickly learn that lesson through the appeals process.

What we want is good practice; my hon. Friend the Member for Thirsk and Malton made that point powerfully. We want applicants and councils to sit down together and work out what legitimate pre-commencement issues are. We have no problem at all with such issues being used for pre-commencement conditions, but we want to stop them being abused.

The hon. Member for City of Durham used the instructive example of flooding. The test seems to me to be one of reasonableness. She used the phrase "There may not be evidence". Local authorities are in difficult circumstances if there is no evidence to back up what they seek to do. However, if there is evidence of genuine concerns, that is clearly a legitimate and material planning consideration.

Dr Blackman-Woods: My point was not that there would be no evidence; it was that there might not be evidence about that specific site at that time, but that a wider reading of what a local authority was doing would produce evidence of the need to put in flood allevation some way down the line.

Gavin Barwell: I cannot sit in judgment on how a particular case might be considered, but I refer the hon. Lady to page 12 of the consultation paper, which sets out some examples from current planning guidance, which the Act will put into secondary legislation, of conditions that should not be used. It might be helpful to the Committee if I run through those examples. The first is:

"Conditions which unreasonably impact on the deliverability of a development",

such as those

"which place…disproportionate financial burdens".

The test is one of reasonableness. An inspector would look at whether the evidence that the local authority had presented was reasonable with respect to the use of those conditions. If the hon. Lady is asking me to make it clear that we would not rule out any consideration of flooding matters in planning considerations, I confirm that we absolutely would not. There are often applications in which it is entirely legitimate to do what she suggests.

The second example given in the guidance is:

"Conditions reserving outline application details"—

in other words, where an authority tries to specify things for an outline planning application that could very well be dealt with in a full application further down the line. The third example is:

"Conditions requiring the development to be carried out in its entirety".

The fourth example is conditions that duplicate a requirement for

"compliance with other regulatory requirements",

such as by just repeating something that is already in the building regulations and is therefore covered. The fifth example is:

"Conditions requiring land to be given up".

The sixth is:

"Positively worded conditions requiring payment of money",

as opposed to a section 106 agreement, which says that an application could become viable if a developer deals with certain issues. Those are the clear examples that we have tried to give in the consultation paper of the kinds of things we have in mind.

Having tried to address some wider remarks from Committee members, I turn to the three amendments tabled by the hon. Member for City of Durham. We believe that amendment 15 runs contrary to the purposes of the Bill, as it would clearly allow local authorities to get around regulations approved by this House to prohibit certain kinds of planning conditions. I hope my earlier remarks about reassurances in the Bill to limit the way in which the Secretary of State can use the power, and the requirement on each occasion for a public consultation, have reassured the hon. Lady about how the powers will be used.

11 am

I accept that amendment 18 is a probing amendment to encourage debate. However, it would have the opposite effect to the one the Opposition seek. I guess from the language the Opposition have used in this debate that they want to constrain as much as possible the circumstances in which the Secretary of State could use the power to make regulations banning certain conditions. The amendment would remove one of the safeguards in the

Bill, which is that conditions that make a development acceptable in planning terms are legitimate. I hope the hon. Lady will not press it, because it runs counter to what she has been trying to achieve according to her speech.

On amendment 16, the Government have no argument with the principle expressed by the Opposition; we simply do not think it is necessary to write it into statute. Of course, when the Government consult on the regulations, first and foremost we will wish to consult local authorities, given their crucial role in the planning system. There are examples of requirements to consult in all sorts of statutes, without the need to specify in a Bill the exact nature of who has to be consulted. I hope the Opposition will take us on trust and take my words on the record as a clear statement of intent that any time the Secretary of State sought to use these powers, we would want to take full account of the views of local planning authorities about the said use. On that basis, I ask the hon. Lady not to press the amendments.

Dr Blackman-Woods: That was a very helpful and, in some ways, enlightening response from the Minister. Unfortunately, we ended up having evidence presented to us that was not evidence and examples that were not examples, but instead a typology of circumstances in which the clause may or may not be applied. That is in a consultation document that sits outwith the Bill at this point.

Kevin Hollinrake: What does the hon. Lady regard as evidence? The submissions of developers, district councils, small and large builders—are they not evidence? Does she not recognise them as such?

Dr Blackman-Woods: The only example that has been given to us in the Committee, apart from the ones I speculated on myself, was landscaping. I think we dealt with why landscaping is so vital to know about at an early stage in the process.

Jim McMahon: A lot of examples have been used—we have had this debate often, and we have gone around the houses on bats and newts and, at one point, hedgehogs. That is all fine and well, but we really wanted to get to facts and numbers. How many planning applications have been frustrated or delayed significantly because of these conditions? We do not have those facts. We have people giving evidence of their experience and opinion, which is important, but is not the same as the hard numbers we have asked for.

Dr Blackman-Woods: My hon. Friend makes an excellent point about the various surveys that the Minister mentioned, which I was about to come to.

Chris Philp: I was about to draw the hon. Lady's attention to the extensive list of submissions that the Minister read out in his speech a few minutes ago. Perhaps I might add my own experience. As I mentioned in my declaration of interests, prior to being elected I ran a business that provided finance for construction projects. The whole array of pre-commencement conditions are often very detailed. For example, they frequently stipulate precisely what kind of brick must be used and it often takes a very long time to get discharged. The pre-commencement conditions are often more detailed than one would reasonably expect.

With respect to the shadow Minister, I do think there is an issue here and that the Minister is trying to address it in a balanced and reasonable way.

Dr Blackman-Woods: In which case, what I would say is that we need the evidence in front of us. What examples are there? In how many sets of circumstances? How and why are the conditions inappropriate? In a conservation area, for example, the type of brick would be an important pre-commencement condition.

The evidence from Knight Frank was an assertion that there was a problem because we had no details and no number of applications—nothing. The Crest Nicholson example was a problem with signing off pre-commencement conditions and we on the Labour Benches have already said we recognise that is a problem. The signing off of pre-commencement conditions is a very different issue from the setting of conditions, and the clause is about the setting of planning conditions.

In the NHBC survey, the primary problem identified was again the time taken to discharge the conditions, not the conditions themselves. That was also the primary concern in the District Councils Network survey. We are not saying there is no evidence out there of problems signing off pre-commencement conditions—

Gavin Barwell: It is becoming increasingly frustrating that the Opposition do not seem to want to listen to evidence presented to them. Let me repeat two points so that the hon. Lady cannot skip over them. In the NHBC survey 34% referred to the time to clear conditions—she is quite right about that—and 29% referred to the extent of those conditions. She skipped over the quote from Persimmon that,

"planning-related pre-start conditions continue to increase the time taken to bring new outlets"—

not a word I like, so new homes—

"to market".

What does she have to say about the very clear evidence?

Dr Blackman-Woods: I think the Minister and I have a really different understanding of what evidence means. I was coming to the District Councils Network and Persimmon because they mentioned, as did other people who gave evidence to the Committee, that there is an assertion that there is a problem, but we do not have hard and fast evidence of it. That is the point we have been trying to make to the Minister. He has not brought forward the hard evidence and we have not had good examples. We have been struggling to come up with examples and the Minister has certainly not presented any. We are not convinced that the clause is necessary.

For some of the reasons given by the Minister, I will not press the amendment to a vote, particularly as I take at face value his assurance about amendment 16 and that there will be consultation with local authorities. I am surprised that he did not take the opportunity in proposed section 100ZA(3) to add, "including local authorities". If he is going to include "public consultation" in the Bill, he may as well include "consultation with local authorities." Not doing so seems rather odd, especially

as he has acknowledged so strongly that he wishes to consult local authorities in drawing up the regulations. Why not take the opportunity to amendment that subsection and put "local authorities" in the Bill? I am not sure why he does not want to do that, but at least something has been read into the record that perhaps will give some reassurance to local authorities that these regulations will not be as drastic or unworkable as they may be if local authorities were not involved in drawing them up. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Blackman-Woods: I beg to move amendment 19, in clause 7, page 6, line 18, at end insert—

"including in terms of sustainable development and public interest."

This amendment would ensure that there is a sustainable development test in conditions and that they are acceptable to local people.

The Minister often takes our probing amendments in a way that seeks to shine light on the Opposition's view, but I stress that we have tabled those amendments to test the Government's view, because, alas, the Government are putting forward the Bill, not the Opposition.

Amendment 19 would ensure that where regulations are brought forward by the Secretary of State, he would have to comply with an additional measure to those set out in proposed section 100ZA(2), to get around the problem that amendment 18 in some senses addressed. We understand that the list of measures in that subsection follows what is in the NPPF and the planning guidance, but it may be missing some important aspects of a development and the pre-conditions that apply to it.

The subsection says that when the Secretary of State is making regulations, he has to consider things such as whether whatever he is asking local authorities to do or not to do will

"make the development acceptable in planning terms",

and whether it is

"relevant…to planning considerations"

and

"reasonable in all other respects."

Given the way in which sustainable development apparently underpins the NPPF, the amendment would require the Secretary of State also to look at whether the regulations would make the development more acceptable in terms of sustainable development and the public interest.

I am sure the Minister will want to know that several bodies—not just the Opposition—are concerned that something could accidentally slip through the provisions in proposed section 100ZA(2) that may be unhelpful to wider sustainable development considerations, and in particular contrary to the wider placemaking objectives that a local authority may want to pursue. The amendment seeks to ensure that in setting or removing any conditions, the Secretary of State ensures that they contribute to the sustainable economic development of the community, protect and enhance the natural and historical environment, and contribute—the Minister has covered this to a degree, but we will test him again—to mitigation of and adaptation to climate change, in line with the objectives of the Climate Change Act 2008, which I will come to.

The amendment is important because the NPPF makes it clear that development should be sustainable. Paragraph 5 says:

"International and national bodies have set out broad principles of sustainable development. Resolution 42/187 of the United Nations General Assembly defined sustainable development as meeting the needs of the present without compromising the ability of future generations to meet their own needs. The UK Sustainable Development Strategy *Securing the Future* set out five 'guiding principles' of sustainable development: living within the planet's environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly."

11.15 am

The NPPF also makes it clear that:

"The purpose of the planning system is to contribute to the achievement of sustainable development."

I am sure hon. Members will want to know that the NPPF then goes on to describe in more detail what is meant by "sustainable development" in the planning system. It looks at three dimensions: economic, social and environmental. If the Minister wants to understand why we outlined those three particular areas in response to amendment 18, it is because the NPPF makes it clear that those specific aspects of sustainable should be considered.

The NPPF describes the economic role as,

"contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure".

The Minister knows that, on Second Reading, the Opposition were concerned about the way in which the infrastructure provisions of the Bill were removed. In fact, the quite minor addition to the clause that the amendment would make would put some requirement on the Secretary of State and others to think about how infrastructure-supporting development would be considered. That is the economic role.

The social role is described as:

"supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being".

Again, we think the amendment gives some reassurance to the local communities we were talking about earlier this morning. It would require the Secretary of State to think about whether the conditions are creating a high-quality built environment with accessible local services that—this is the key phrase—"reflect the community's needs".

As the Committee knows from earlier discussions, our concern is that something being imposed or taken out by the Secretary of State could mean that something that is vital to the local community is lost. This addition to proposed section 100ZA(2) might give those communities further reassurance that conditions that are important to the needs they have identified, possibly through the community involvement statement undertaken by the local authority, will not be removed.

Lastly, the NPPF outlines the environmental role that also needs to be taken on board—looking at sustainable development. It describes the environmental role as,

"contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy."

That is something I think we would all agree is absolutely necessary. If Members on the Government side of the Committee want to know why there are planning regulations about protecting the natural environment and some of our wildlife, they need look no further than their own Government's national planning policy framework, which outlines that all development should be underpinned by these principles.

Even more importantly, the NPPF says very clearly that these roles

"should not be undertaken in isolation,"

that they are

"mutually dependent",

and that:

"Economic growth can secure higher social and environmental standards, and well-designed buildings and places can improve the lives of people and communities."

But they can only do that if a development is carried out in line with sustainable development principles and the presumption that those will work in practice, rather than simply being part of the NPPF, put on a shelf in a planning department, not being used or applied. We certainly do not want a situation where a local authority has been diligent and checked that the conditions are in line with the NPPF and the guidance, and then the Secretary of State comes along and removes those conditions, rendering a development outside the sustainable development principles. We want to help the Minister by ensuring that that will not happen.

The amendment would mean that the Secretary of State could only impose or remove a condition that had no bearing on sustainable development, including whether it is socially, economically or environmentally in line with sustainable development as outlined in the NPPF. Paragraph 14 of the NPPF is very clear that the presumption in favour of sustainable development,

"should be seen as a golden thread running through both plan-making and decision-taking".

It is the decision-taking part of the clause that I want to reinforce through the amendment.

The NPPF says that for plan-making, we must ensure that local planning authorities

"positively seek opportunities to meet the development needs of their area".

It is absolutely right that they do so, but the NPPF also says that they must consider any adverse impacts of doing so. How that is taken on board by authorities and how they seek to apply it is what we are discussing this morning, and that is the source of our particular concerns. They must look at the adverse impacts. A lot of the conditions and preconditions are applied in order to make developments acceptable. Authorities must take into consideration what sustainable development means in plan-making, but as I said, they also must take it into account in decision taking, where we have the same statement:

"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted."

That seems to give a very clear direction to local authorities about how they should put their conditions together. What might make an application acceptable or unacceptable is set out in the NPPF. We want to reinforce that by putting it on the face of the Bill, so that a future Secretary of State, who will perhaps not have been party to the discussions we are having on this Bill today—

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o'clock.