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Public Bill Committee

NEIGHBOURHOOD PLANNING BILL

Sixth Sitting

Tuesday 25 October 2016

(Afternoon)

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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

(Afternoon)

[Steve McCabe *in the Chair*]

Neighbourhood Planning Bill

Clause 7

Restrictions on power to impose planning conditions

Amendment moved (this day): 19, in clause 7, page 6, line 18, at end insert—

"including in terms of sustainable development and public interest."—*(Dr Blackman-Woods.)*

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

2 pm

Dr Roberta Blackman-Woods (City of Durham) (Lab): It is a pleasure to serve under your chairmanship, Mr McCabe. The Minister will be relieved to know that I was not quite in the middle but towards the end of moving amendment 19. I was extolling the virtues of adding to clause 7 a provision that would ensure that the Secretary of State had to take account of the need to promote development that is both sustainable and in the public interest.

To recap, I went through the provisions in the national planning policy framework and in planning guidance relating to sustainable development. Of course, we are also asked to look at the key provisions of the Climate Change Act 2008, which I will only do in a cursory way. Those provisions rely heavily on reducing carbon and on further adaptation measures that help with addressing climate change issues. I am sure the Minister is very familiar with the provisions of that Act and the need to ensure that, where possible, all development addresses those provisions and therefore helps us to combat climate change.

That deals with the first part of the amendment, which is about sustainable development. The amendment also asks that the Secretary of State have some consideration of the public interest, which is much more difficult to deal with than sustainable development, in terms of having a straightforward definition of exactly what we are talking about. For sustainable development we have the NPPF, the guidance and the Climate Change Act. The definition of "public interest" is much harder to agree on.

"Public interest" is a term with a long history. It says something about transforming the interests of many people into some notion of a common good. I am sure that we all think that is a central task of the whole political process. Thomas Aquinas maintained the common good to be the end of government and law, which is interesting—we might want to ponder that for a moment or two, as a bit of light relief. We also know that John Locke put

"peace, safety, and public good of the people"

as the ends of the political system. That is quite a nice thing for us to reflect on as well. One says that the public interest is central to our task this afternoon, and the other says that it should be nothing to do with us at all. I use that only to show that there is probably no absolute and complete understanding of what public interest is.

Rousseau, as always, has come up with something that helps us. He took the common good to be the object of the general will and purpose of government. That might help the Secretary of State in this regard, because it says clearly that the common good should be an outcome of legislation and of what we are all doing in this room. I therefore take it as read that there will be no problem putting those words on the face of the Bill.

Of course, it is not quite that straightforward. In practice, the public interest is often subject to differing views. People can decide that a public or common good can be met in a variety of ways. It is therefore not always exactly clear in practice what is meant by the public interest, but we are happy to leave it to the Secretary of State to come forward with a clear definition, if he so wishes.

Standard dictionaries manage to come up with a generally held view of the public interest as

"the welfare or well-being of the general public"

and of

"appeal or relevance to the general populace".

That Random House dictionary definition is incredibly helpful, because that is what we would want planning developments to be. We would want them to promote the welfare or wellbeing of the general public, and we would want them to have an appeal to, and be considered relevant to, the general populace. We would like that sort of consideration, particularly the relevance of a development's appeal to the local population, to be quite high up on the Secretary of State's list of issues and interests when determining which conditions he will or will not allow.

We have had a wide-ranging look at the amendment, so I really look forward to hearing what the Minister has to say.

The Minister for Housing and Planning (Gavin Barwell): It is a pleasure to serve under your chairmanship, Mr McCabe.

I thank the hon. Member for City of Durham for tabling amendment 19, which brings us back to less divisive territory and raises the important issue of having to take planning decisions both in the public interest and with the aim of achieving sustainable development. As she explained, it would add to the list of constraints on the Secretary of State's regulation-making power in proposed section 100ZA(2) by explicitly requiring the Secretary of State to take account of sustainable development and the public interest when deciding whether it is appropriate to prohibit certain classes of planning conditions. Although the matters that the hon. Lady has raised are of the greatest importance in the planning system, I shall argue that the amendment is not necessary, in much the same way as amendment 16 was not necessary.

Subsection (2)(a) and (b) of proposed section 100ZA already provide assurance that the Secretary of State will be able to prohibit conditions only in so far as it is necessary to ensure that conditions will

"make the development acceptable in planning terms"

and are

"relevant to…planning considerations generally".

That includes the need to consider the presumption in favour of sustainable development, which is at the heart of planning policy, plan making and decision taking. Local views are also already central to the planning system.

I thought that the hon. Lady made my point for me quite powerfully by quoting voluminously from the NPPF. Nevertheless, I shall briefly pick out a couple of other quotes. The then Secretary of State's forward to the NPPF starts with the words:

"The purpose of planning is to help achieve sustainable development."

Further on in the document, at paragraph 14, it states:

"At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking."

I do not think that anybody who has spent even a moment reading the document could doubt the extent to which it is based on the principle of sustainable development.

I assure Members that clause 7 will in no shape or form restrict the ability of local planning authorities to seek to impose planning conditions that are necessary to achieving sustainable development, in line with national policy. The proposals will not change the way that conditions can be used to maintain existing protections for important matters such as heritage, the natural environment and measures to mitigate flood risk.

On taking account of the public interest—I greatly enjoyed the quotes that the hon. Lady read out—and ensuring that planning decisions and conditions are acceptable to local people, the Government continue to ensure that the planning system is built on the principle of community involvement. The system gives communities statutory rights to become involved in the preparation of the local plan for their area, bring forward proposals for neighbourhood plans, make representations on individual planning applications and make comments on planning appeals should applicants object to decisions made by local planning authorities. Account is also taken of the views of local people if an application comes to my desk, as happens infrequently.

I have no problem with the language in the hon. Lady's amendment; the principles of public interest and sustainable development sit at the heart of the planning system. I simply say that it is not necessary to add that language to subsection (2)(d), because that language goes much wider than that one subsection; it runs right through the NPPF, which is referred to elsewhere.

Dr Blackman-Woods: I have listened carefully to what the Minister has said. We are probably all just a little disappointed that we are not going to hear the outcome of the Secretary of State's deliberations on what exactly is meant by the public interest and that that will not be put in the Bill. The purpose of the amendment was really to elicit from the Minister how important he felt upholding the principle of sustainable development was, and to get that read into the record.

The national planning policy framework document is widely accepted as a very good piece of work, but that does not mean that it will always be there. In the future there may be a significantly amended NPPF in which sustainable development is not so obvious. I quoted from it today to show that it is there at the moment. We want to ensure that decisions made under the provisions in the Bill are made with sustainable development and the public interest in mind. Given the Minister's reassurances, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Blackman-Woods: I beg to move amendment 17, in clause 7, page 6, line 20, at end insert—

"(1A) Regulations made under subsection (1) must make provision for an appeal process."

This amendment would ensure that provision is made for an appeals process.

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

Amendment 20, in clause 7, page 6, line 24, at end insert—

"where agreement cannot be reached a mediation system should be prescribed."

This amendment would allow for there to be a mechanism to resolve disputes.

Amendment 21, in clause 7, page 6, line 26, at end insert—

"(5A) The Secretary of State should provide guidance for appeal routes where an agreement cannot be reached on pre-commencement conditions, along with guidance on pre-completion and pre-occupation conditions."

This amendment would ensure that there is clarity on appeal routes, pre-completion and pre-occupation conditions.

Dr Blackman-Woods: The amendments in this group deal with the need that may arise from clause 7 for appeal systems or mediation arrangements. The Minister did not like our amendment 15, which sought to provide a series of exceptions whereby local authorities may not have to follow the conditions directed by the Secretary of State. Amendment 17 seeks to put in place an appeals process for local authorities so that if they strongly disagree with regulations that the Secretary of State is trying to introduce through conditions that he or she has already applied, they can appeal against that decision. I understand that that puts us in a constitutionally difficult situation, because it is of course the Secretary of State who ultimately adjudicates on appeals, but I am sure it is not beyond the wit of all of us here to come up with an independent arbitration system whereby local authorities at least feel that they can put their case to an independent body or an individual and have them adjudicate on whether the Secretary of State has acted properly and reasonably.

2.15 pm

The Opposition are quite relaxed about what the appeals system might be like. We understand that the amendment might cause some problems, but we are happy for the Government to come back with another amendment to ensure that at least there is no straightforward imposition of regulations by the Secretary of State—we understand that there will be some public consultation on those. There is nothing in the Bill that says the Secretary of State must abide by what the public say; it just says that there must be public consultation. It could

totally agree with the local authority and the Secretary of State could say, "Sorry, public; I don't agree with you. I think this development needs to proceed without such and such a condition being applied to it." Both the public and the local authority would simply have to put up with that, whether they agreed or not.

It seems to us that, as we described this morning, that is quite a strong transfer of power to the Secretary of State with regard to setting pre-commencement planning conditions. We would like some process in the system to allow a stop if the local authority thought it necessary for an independent body to see whether the conditions were really needed. Both parties would then have to accept the decision. That body could be an existing tribunal. The Lands Tribunal already sits, so there may be a body already able to perform this task. Will the Minister consider that?

Amendment 20 tries to put a system in place—again, I hope the Minister finds this helpful—to deal with proposed section 100ZA(5), whereby there must be a written agreement between the developers and the local authority. Our proposal is about when an agreement cannot be reached and whether the Minister is really serious about speeding up development, as he said this morning. We understand that if agreement cannot be reached, the local authority will simply refuse the development and the process will have to start again. Our proposal seems to be a helpful way of speeding up development.

We are wondering whether, in putting a system in place where there has to be written agreement between the local authority and the developer, the Minister has given any consideration to a mediation system so that someone could talk to both sides to see whether there is a compromise that might enable the development to proceed without having to go down the line of refusal, with all the bitterness that could arise, not to mention slowing down the development. Our suggestion is sensible, but perhaps the Minister does not want a mediation system, in which case perhaps he will tell us whether his Department considered it and rejected it and, if so, for what reasons.

Amendment 21 takes that argument a little further: if the Government, for whatever reason, do not think that a mediation system would work, perhaps the Secretary of State should provide guidance on appeal routes. Cases might go to an appeal on the setting of a condition anyway, but we are trying to tease out whether the Minister has thought of a faster-track process for when the two parties cannot come together to agree a way forward with conditions.

As I am sure the Minister knows, that is what the British Property Federation asked for in a briefing sent to all Committee members. It asked that the Minister should set out

> "a clear appeal route for cases when agreement cannot be reached: If a planning permission is refused or has to be appealed solely because of a failure to reach agreement on a precommencement condition, it should be possible to appeal that condition alone under s.73—that is to say, only the issues relevant to the condition in question should fall to be considered on appeal. It could be worth considering the introduction of a fast-track written representations process for these appeals that, if sufficiently quick, could be carried out without the possibility of costs. But if a hearing is required, then costs should sit fully with the party that has failed."

That is another helpful suggestion for the Minister to take on board, so that we do not end up with costly and sometimes lengthy appeals, and so that when agreement cannot be reached, a fast-track system is in place. I look forward to hearing what the Minister has to say.

Jim McMahon (Oldham West and Royton) (Lab): It is a pleasure to serve under your chairmanship, Mr McCabe. May I refer you to my declaration of interest as a member of Oldham Council?

Clearly, I agree entirely with my hon. Friend the Member for City of Durham, who added real weight to what the Secretary of State and the Minister are trying to achieve. The Bill allows the Secretary of State to make regulations that prescribe the circumstances in which certain conditions may or may not be imposed, but we believe that it is important for the planning authorities to be consulted.

There has been some conflict in the discussion that has taken place about the spirit in which the guidance has been written so far, because a lot relates to how matters of heritage, the natural environment, green spaces and flood mitigation will be accommodated. A lot of the pre-planning conditions that have been raised to date have dismissed such issues—we have talked about bat surveys, newts, drainage conditions and landscaping, all exactly the types of issues that fall into those categories. It is important that we are absolutely clear, not just for us, but for the public who will have to navigate what is already a very complex system for people not used to it, so that they know what to expect.

An appeals process makes complete sense. Any idea of natural justice allows people who are unhappy with a decision to go somewhere—where can be up for debate—and to have their argument heard again. That is right, and why worry about it? In this whole debate, in all our sittings, we have seemed to talk down what are quite small matters—to be honest, when we talk about them in Parliament they can be very small issues. The colour, type or texture of bricks are perhaps not issues that we should be discussing in this House, but they are very important for someone in a sensitive area with deep history and heritage when there is a development taking place next door.

If something is not agreed pre-commencement and then goes to appeal, is it right that someone who lives hundreds of miles away from the development should be able to express a very different view about the importance of that feature of the application? Local people want to know that, in the spirit of the neighbourhood plans, which we all welcome because they empower people to have more say over their communities, we will not snatch that control away from them unintentionally because we have not made accommodation further down here.

I will leave it there, but in the spirit of trying to make this work—nobody wants Bills that do not work in practice—let me add that the art of consensus is not waiting for people to come to our point of view, but accepting that we all have a responsibility to add to this process and take on board others' views. If a good suggestion has been made, it should be taken on board.

Gavin Barwell: Addressing that last point directly, it is certainly my intention to achieve consensus where possible, but sometimes we have to accept that we disagree on issues. Let us look at the three amendments in detail and with a positive spirit.

Amendment 17 introduces a rather radical constitutional concept. The hon. Member for City of Durham went even further, suggesting that Governments always follow the results of every consultation they have, but I will not be drawn into that territory. In the current planning system, if an application for planning permission is refused by the local planning authority or granted with conditions, an appeal can be made to the Secretary of State under section 78 of the Town and Country Planning Act 1990. It is also possible for the applicant to apply to the local planning authority for the removal or variation of a condition attached to planning permission. If such an application is turned down, it is also possible to appeal to the Secretary of State in relation to that decision. As Opposition Members have recognised, in the unlikely event that an applicant refuses to accept a necessary condition proposed by a local planning authority, the authority can refuse planning permission for the application as a whole.

Amendment 17 would do a much more radical thing, which is to give an individual local authority the right of appeal against regulations passed by Parliament. There are some rather interesting constitutional questions about who would hear that appeal and what the result would be if it was upheld. Whoever was hearing the appeal would essentially be telling Parliament that the regulations were wrong and should be abandoned. The hon. Lady is always keen to stress that these are probing amendments and that she is merely inquiring into the Government's thinking. I understand that, but this amendment raises some rather complex questions.

I will repeat the reassurances I have already given. Safeguards are in place under subsections (2) and (3) of proposed section 100ZA of the 1990 Act, inserted by the clause, which constrain the Secretary of State's power to prohibit conditions imposed so that he or she can only prevent the use of conditions that clearly fail to meet the well-established policy tests in the national planning policy framework. It was very nice to hear the hon. Lady be so complimentary about the NPPF document. I share her admiration for it and, like her, cannot envisage a future Government wanting to unpick its key principles. Subsection (2) will ensure that conditions we all agree are necessary and appropriate to the development in question—for example, as my right hon. Friend the Member for Chipping Barnet mentioned, to protect important matters such as heritage or the natural environment—are not prohibited through use of this power.

The second safeguard, in subsection (3), states that before making any regulations on how the Secretary of State might use this power, the Secretary of State must carry out a public consultation. As I have told the Committee, we are currently consulting on the detail of how we might wish to use those powers. Ultimately, we want local authorities and developers to work together from the earliest stage in the development process, including holding discussions about what conditions may be necessary and reasonable. That is the approach advocated in the NPPF and the planning guidance.

I understand what the hon. Lady is trying to achieve with amendment 20. Of course, we have to ensure that where agreements cannot be reached, a sensible solution can be found. However, I am not convinced that a formal mediation system would speed things up, which is the test that the hon. Lady set for it. Clause 7 builds on best practice, as set out in our planning guidance, which states that applicants and local authorities should engage at the earliest possible stage to come to an agreement about these matters. That is what we all want. The question is how best to frame the law and policy to make that happen.

My concern is that if agreement was not possible and there was then a mediation process, and then a possible appeal, that would effectively add another possible stage to the process, which I fear would delay things further. I repeat the assurance that I gave to my neighbour, my hon. Friend the Member for Croydon South, that it is clear in the Bill that if a planning authority felt that an applicant was being unreasonable in not being prepared to accept a well warranted pre-commencement condition, the application could be turned down and the council should be confident that that judgment would be backed up by the Planning Inspectorate.

2.30 pm

Dr Blackman-Woods: I wonder whether the Minister has thought about circumstances in which a local authority could not get the developer's agreement and may feel pressured into lifting a condition that it would otherwise think was necessary because the developer tried to suggest it was unreasonable by making the local authority go to appeal. We are not sure—I would like some assurances from the Minister on this—that that would not trigger the Secretary of State getting involved to impose restrictions on conditions. It seems to me that if the Secretary of State will be able to do that in such circumstances, local authorities will be placed in a difficult situation.

Gavin Barwell: I think I can provide the hon. Lady with quite a lot of reassurance on that front. I think she is envisaging a situation in which a particular application is the cause of conflict and the applicant goes to the Secretary of State and says, "Council A is being unreasonable and you should exercise your power under these regulations to resolve the problem." I think that this House would want to see a more substantive body of evidence for the use of these regulations than one particular case, and in any event there would clearly be a significant time delay in drafting the regulations and bringing them before the House. I think I am also right in saying that there is a general presumption that there are two dates during a given year on which most regulations are brought in. Practically, it is highly unlikely that an applicant will be able to run off to Marsham Street and say, "We need help with this; deal with this." Speaking for myself, I would not want to take decisions based on such one-off cases.

More generally, the hon. Lady raised the question of the balance of power in the planning system. I can speak only for myself, but my approach—it was when I was a councillor and it is now I am a Minister—is to listen to the evidence that people give me when they make complaints about things that they think are unreasonable about the planning system. If I am convinced

[Gavin Barwell]

that they have a case, I think the right thing to do is to shift public policy, as I am doing in relation to pre-commencement conditions.

People complain to me about other matters. For example, developers often complain about how local planning committees work. Local democratic representation has an important role in our planning system, and when developers fall foul of planning committees, it is often because they have not engaged with the relevant local political representatives early enough in the process—or they have engaged, they have been given clear feedback about the likely concerns, and they have not reflected or responded to those concerns.

The point that I have slowly been trying to work my way around to is that my advice to local authorities is to listen, and if a developer is saying, "This condition is unreasonable, for the following reasons," to consider that argument fairly. But if, having reflected on it, they think that the argument has no merit and they are doing the right thing for their community, they should stick to their guns and not be afraid to stick up for the position they believe in.

Dr Blackman-Woods: I have heard the Minister's reassurances on specific individual cases, but what about the generality? For example, a lot of developers may come to Marsham Street and say, "We're absolutely fed up with having to do bat surveys and think about newts"—or even, as the hon. Member for Plymouth, Sutton and Devonport may say, hedgehogs—"and therefore we want these regulations to have much clearer guidance for local authorities in terms of restricting the conditions that they can apply to protect wildlife." Is that a real danger of the clause? Would it not help to have an appeal or mediation system to deal with that?

Gavin Barwell: I can give the hon. Lady strong reassurance on that front. First, she has my hon. Friend the Member for Plymouth, Sutton and Devonport completely wrong; far from wanting to further persecute hedgehogs, he is first to the barricades to protect and defend them.

Let us take the hypothetical example that the hon. Lady gave, where at some point in the future more and more developers are coming to the Secretary of State and saying, "There's a real problem about the way in which the protection of bats is working and the onerous conditions that are being put on us." If the Secretary of State was persuaded by those arguments, we would need to look at planning policy and whether we wished to shift it.

Broadly speaking, the test with all these things is one of proportionality. I think all of us would place significant weight on the protection of our wildlife and fauna. The test is always one of reasonableness, in terms of the costs incurred by the developer to do that. If a future Secretary of State decided that in his or her judgment that balance was wrong, that would involve a shift in policy. It would not be possible to outlaw a type of condition that is consistent with what current policy says. I hope that reassures the hon. Lady.

Oliver Colvile (Plymouth, Sutton and Devonport) (Con): It is not only a case of trying to talk to politicians at an early stage; it is also about engaging with the local community, so that it feels it has a say and has been involved in the decision-making process.

Gavin Barwell: My hon. Friend makes a good point. Clearly, councillors and Members of Parliament are representatives of those communities, and engagement with them is important, but he is quite right that developers should also be talking directly to local people in the relevant area. They should be talking and listening. In my experience of the planning system, that kind of positive engagement is very good for the developer because it avoids problems later on when things come to a planning committee.

The broad point I was making to the hon. Lady is that my approach, were I on a local planning committee, would be to listen to concerns that developers expressed about planning conditions and judge whether the evidence backed up those concerns. If it did, I would adjust my policy, but if it did not, I would stick to my guns and do what I thought was the right thing for my local community.

On amendment 21, the hon. Lady made an important point about providing clarity for the applicant during the process. The amendment seeks to ensure that associated guidance is made accessible to inform parties of the appeals procedure, should an agreement not be reached on the application of conditions. I agree that we need to ensure that applicants are fully aware of the options available to them and how they can pursue that action. However, I would like to assure hon. Members that that information can already be found online as part of our planning guidance, and I believe it provides the right support to those looking to appeal against the imposition of certain conditions. On that basis, I hope the hon. Lady will accept that the necessary protections are there.

Dr Blackman-Woods: I thank the Minister for his helpful additional information on how this process might work in practice, particularly with regard to instances that might provoke the Secretary of State to develop and put out to consultation regulations to affect the conditions being applied by local planning authorities. I heard what he said about giving clarity to applicants about the appeals process and the circumstances in which the Secretary of State might get involved. I would like some time to consider that further. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: We now come to amendment 22 to clause 7. Before I call the shadow Minister, it might be helpful to advise the Committee that, in the light of the wide debate we have had on the amendments tabled to the clause, we are not planning to have a separate debate on clause stand part. If hon. Members wish to make any further comments about clause 7, I suggest they do so after the shadow Minister's speech on amendment 22.

Dr Blackman-Woods: I beg to move amendment 22, in clause 7, page 6, line 23, leave out subsection (5).

This amendment would ensure that local authorities are still able to make necessary pre-commencement conditions on developers.

Thank you for that direction, Mr McCabe. I will address my comments not only to amendment 22, but to some of our wider concerns about clause 7.

The Minister knows, because he heard the evidence, as we did, that clause 7 was the one bit of this relatively short Bill that concerned people who gave evidence to the Committee. In fact, a number of people thought that the clause was just as likely to slow down development as it was to speed it up. Councillor Newman, who represented the LGA, said:

"The whole perspective of what I am seeing in the Bill looks very much like a sledgehammer to crack a nut approach—another layer of red tape."

Kevin Hollinrake (Thirsk and Malton) (Con): It is a pleasure, Mr McCabe, to serve under your chairmanship. Is not that exactly the opposite of what has been said? We are trying to get rid of the complexity of the system. Clause 7 creates conditions of good practice, where people sit down together and make an agreement. If a council is being reasonable and a developer is reasonable, there will be no issue. There will be written agreement and things will move forward. If either party is being unreasonable, an inspector will be able to look at that and judge for the other party. It is in everybody's interests to sit down and get a sensible agreement on the conditions. Is not that a sensible piece of legislation?

Dr Blackman-Woods: The hon. Gentleman has described the situation that exists at the moment, not the position in which we will all be in after the Bill is enacted. The Bill puts in writing the agreement between the local authority and the developer. Significantly, as we have all been discussing, it gives powers to the Secretary of State to intervene in the process by producing regulations that will say something about the conditions that can be attached.

I agree with the hon. Gentleman that the system is working well at the moment because, as Councillor Newman reminded the Committee,

"nine out of 10 permissions are given, and 470,000 permissions are already granted for homes up and down the land that await development for various reasons."

All those reasons are not pre-commencement planning conditions.

Hugh Ellis said:

"From our point of view, the concern about conditions is that they are fairly crucial in delivering quality outcomes."—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 23, Q31.]

He also said that he had no evidence whatever that conditions result in delay. Duncan Wilson from Historic England said that local authorities are usually reasonable already. He did not feel that unnecessary conditions were being imposed, and he believed that that particular assertion could be challenged. That is what we have been attempting to do thus far today.

It is not just Her Majesty's Opposition saying that all this is unnecessary; it is the Town and Country Planning Association, the LGA, Historic England and the British Property Federation, which said that it saw an issue with the discharge of conditions, but could not give us much detail on pre-commencement conditions.

I want to outline the evidence we have been given on why the clause is unnecessary. Various people who gave evidence said that they felt that if an application was turned down because an agreement could not be reached with the developer, it could take longer to argue about the condition and determine it than under the current set of arrangements. I point out to the hon. Member for Thirsk and Malton that that point has been made not only by me but by lots of other people.

2.45 pm

Amendment 22 seeks to remove subsection (5) from proposed section 100ZA. Local authorities could still make necessary pre-commencement conditions and still insist in certain circumstances, where they can reach an agreement with a developer, that those conditions stand. It would ensure that local authorities are not restricted from applying conditions that they think are necessary either by the Secretary of State or by not getting the written agreement and then the applicant going to appeal.

As we said earlier, it is quite difficult to envisage a set of circumstances in which the Secretary of State would step in and apply conditions, especially as the provisions of the framework that cover setting conditions are already heavily prescribed. Simply repeating them here for the Secretary of State to somehow come in and make a different decision under those same sets of restrictions and prescriptions seems a rather strange thing for the Government to do.

As I pointed out earlier, the NPPF has lots of paragraphs that deal with planning conditions, but I will not read them all out; we do not have time this afternoon. Some of the most pertinent to today's discussions are paragraphs 203 to 206. Paragraph 203 is important because it makes the case that we have been making today about why we want local authorities to be able to have the same planning conditions. It states:

"Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition."

I want to labour that point because the Minister's national planning policy framework sets out for local authorities that conditions should be the primary vehicle that is used or put in place to try to make unacceptable developments acceptable. That is his direction to local authorities. He then comes along a few years down the line and says, "We might have given you that direction, but we now think you are overdoing it a bit," which is presumably what the Government say, "so we are now going to take that power away from you. If you are using this power too much, we will have it limited by the Secretary of State." However, that is not in paragraph 204, which states:

"Planning obligations should only be sought where they meet all of the following tests...necessary to make the development acceptable in planning terms"—

that is in clause 7—and where they are

"directly related to the development; and fairly and reasonably related in scale and kind to the development."

My point is that local authorities already have to ensure that their conditions follow the principles set out in clause 7 for the Secretary of State. So they should be doing all that anyway.

The NPPF states:

"Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."

All that the Minister had to do to ensure that conditions were being properly applied was to give local authorities

a direction saying, "By the way, local authorities, when you are putting these conditions on things, can you please make sure that they follow the national planning policy framework?"

However, the Minister had other levers that he could use in addition to directing local authorities to abide by the NPPF. There is a section of planning practice guidance on the Government's website explaining exactly how to apply conditions. There are six tests. Conditions must be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

The web page goes on to tell local authorities how to apply the tests, in case they are not aware of that—although as they assess applications all the time I imagine they would be aware; but nevertheless I accept that it is helpful. The guidance that local authorities get about setting conditions that are necessary is:

"A condition must not be imposed unless there is a definite planning reason for it".

So it must be

"needed to make the development acceptable in planning terms.

If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity."

The test of whether conditions are relevant to planning asks:

"Does the condition relate to planning objectives and is it within the scope of the permission to which it is to be attached?

A condition must not be used to control matters that are subject to specific control elsewhere in planning legislation (for example, advertisement control, listed building consents, or tree preservation).

Specific controls outside planning legislation may provide an alternative means of managing certain matters".

The examples given are public highways and highways consent. The guidance is clear about what "relevant to planning" means, and that sometimes it might mean having to rely on something immediately outside the planning system.

On whether a condition is relevant to the development to be permitted, the guidance states:

"It is not sufficient that a condition is related to planning objectives: it must also be justified by the nature or impact of the development permitted.

A condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development."

That is, again, very helpful and precise.

The next test is whether it would be practicably possible to enforce the condition:

"Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control."

What is meant by "enforceable" is also thus pretty clear. As to the requirement to be precise:

"Poorly worded conditions are those that do not clearly state what is required and when must not be used."

So local authorities are even given guidance on how to word a condition—never mind its content.

The condition must also be reasonable in all other respects, and the guidance refers to conditions

"which place unjustifiable and disproportionate burdens on an applicant".

What a pity it is that the hon. Member for Thirsk and Malton is not in his place, as he was talking about unreasonable burdens. He said that we could be placing burdens on developers. Actually, the Government's own guidance states:

"Conditions which place unjustifiable and disproportionate burdens on an applicant will fail the test of reasonableness...Unreasonable conditions cannot be used to make development that is unacceptable in planning terms acceptable."

There are lots and lots of pages of guidance about various circumstances in which conditions should and should not be used. There is the NPPF and the guidance, and there is further information from the Planning Advisory Service. If local authorities are in any doubt whatsoever about how they should be putting conditions together and the logic they should follow, and if they do not get everything they need from the guidance and the framework, the PAS document laying out the "Ten best practice principles" is very helpful. Principle 1 states:

"The number of conditions imposed through a planning permission should be kept to the minimum necessary to ensure good quality sustainable development."

I ask the Minister to note that that actually mentions sustainable development.

The second principle is that applicants should provide "better detail" because that is likely to lead to fewer conditions.

Principle 3 states:

"Positive dialogue between applicant/planning authority/statutory consultees/community is likely to result in fewer conditions being imposed".

The PAS document sets out a different way of achieving fewer conditions from the Government's way of referring the matter to the Secretary of State. The Government's own advisory service is suggesting that instead of taking the Government's route, we take a route of dialogue, and try to use the dialogue between all the interested parties to come to an agreement about a condition or a lack of it.

Principle 4 states:

"If a matter is controlled under other regulatory regimes then it should not be the subject of a planning condition."

Principle 5 states:

"A prescriptive condition setting out what would make the detail of a scheme acceptable is often a better option than an approval of detail condition."

The document states that other considerations should include: whether the condition is deliverable; whether it is inappropriate in terms of timing or lack of clarity; whether phasing can increase risk and cost; and whether a planning obligation would be better than a condition. It also advises looking at notices, and thinking about whether conditions are enforceable or whether they can be done with some other notice, rather than a condition. It also states:

"If an approval of detail application involves consulting with the community/parish/neighbourhood planning forum, this should be flagged and explained in the reason for the condition."

With all that information and guidance, it is extraordinary that the Government's position seems to be, "We have set the framework, the guidance and detailed information for local authorities through the Planning Advisory Service. Yet you are still managing to come up with, on a fairly regular basis, a whole list of pre-commencement planning conditions that somehow manage to breach

these particular requirements." It is quite extraordinary for the Government to say that. As we have said already today, if they are going to make that claim, it has to be backed up with evidence, and so far the Committee has simply not seen that evidence.

3 pm

Helen Hayes (Dulwich and West Norwood) (Lab): My hon. Friend is setting out her case powerfully. It has been suggested that the proposal set out in clause 7 is a sledgehammer to crack a nut. Does she agree that it is a sledgehammer to crack the wrong nut, because what really needs to be addressed is the resourcing of local authority planning departments, so that they can apply the existing guidance thoroughly and rigorously, give each application the time it needs and properly negotiate with applicants to ensure that applications are policy compliant?

Dr Blackman-Woods: My hon. Friend, as ever, hits the nail on the head. It is the wrong target, which is exactly our point. A lot of information is available to local authorities, never mind their experience of applying conditions. The problem is not setting conditions, but the lack of resourcing for planning departments. As we rehearsed this morning, most people's problem with pre-commencement planning conditions is not the conditions themselves but the time it takes to discharge them because of the lack of resources in planning departments. A lot of information is available to local authorities, so in general one would not expect them to set unnecessary conditions, because that would clearly be in breach of all the documents I have discussed.

I picked up, at random, a list of pre-commencement planning conditions from my constituency. The developer has just written to me about them, to ask me to ensure that the local authority discharges them, and I thought, "Here's a helpful bit of information that has just dropped into my inbox at a very appropriate time." To give the Committee some context, the development is taking place in a conservation area—a rather large student accommodation block—so one would expect the local authority to take some care and use some diligence over the pre-commencement planning conditions, and indeed it has. I want to go through the list—I will do so as quickly as possible—because Government Members are saying that these pre-commencement planning conditions are often unnecessary, yet when I went through the list I could not find a single one that was unnecessary. The list states:

"No development shall take place until samples of the materials to be used in the construction of the building hereby permitted have been submitted to and approved in writing by the local planning authority."

Gavin Barwell: Is that necessary?

Dr Blackman-Woods: It is absolutely necessary; it is in a conservation area.

Gavin Barwell: Not pre-commencement.

Dr Blackman-Woods: Well, we will have to disagree. I think that if somebody is asking for planning permission—not just outline planning permission—for a major development in a conservation area that abuts a world heritage site, it is vital that the materials to be used are included as a pre-commencement condition.

Government Members will love the next part:

"No development shall take place until full details of the location of the proposed bat loft and a scheme for the provision of 10 house sparrow terraces have been submitted to and agreed in writing by the local planning authority."

We all agreed earlier that protecting wildlife is really important. As the Minister knows, sparrows need to be protected if they are to survive and thrive. Such mitigation and compensation are necessary within the breeding bird assessment regulations.

Kit Malthouse (North West Hampshire) (Con): I hope that the hon. Lady is not going to go through too extensive a list. One of the points that we have been trying to make is that quite a lot of the conditions that have been mentioned could be carried out during, say, the demolition phase; they do not have to take place or be agreed before the contractor starts at the site.

On the particular condition that the hon. Lady just raised, although it might be possible for the developer to agree a location for the bat and sparrow accommodation, there is no guarantee that the inmates will transfer willingly. Anybody who knows anything about bats—I happen to, strangely—will know that one can put up a bat loft to accommodate displaced bats but they might not use it for years, and they might never use it. They are capricious creatures that might decide to go elsewhere, perhaps because of the noise of the development.

The same is true of colonies of sparrows. Sparrows are strange birds, in that they do not travel very much. They tend to live in one place—as the hon. Lady said, they colonise particular areas—and they might even pick a particular tree that they never leave, but they are unlikely to move simply because someone decides to put up accommodation. All these things are iterative and could be done during the demolition phase. There is no reason to wait months and to have an argument about where the sparrow accommodation should go, because even the sparrows might not agree on where is decided.

Dr Blackman-Woods: The hon. Gentleman might have had a point had there been a demolition phase. As there is not, it is important that all these things are known up front. A further condition was noise mitigation. The developers were asked for details of proposed foul and surface water drainage; for an archaeological investigation; to refrain from site clearance, preparatory work or development; for a tree-protection strategy; and for a site map.

Oliver Colvile: Will the hon. Lady give way?

Dr Blackman-Woods: I shall take the hon. Gentleman's intervention and then explain why, given the circumstances, those preconditions were necessary.

Oliver Colvile: I thank the hon. Lady very much. I should have declared an interest: I have a shareholding in a communications company. Does she agree that we need to ensure that we have hedgehog super-highways so that hedgehogs can get from one garden to another?

Dr Blackman-Woods: Absolutely. The hon. Gentleman makes an excellent point. In the development in Durham that I am describing, because it abuts a wooded area in the centre of the city called Flass Vale, several local residents were concerned that there was no particular order in the pre-commencement conditions about the

[Dr Blackman-Woods]

protection of hedgehogs. We are all terribly concerned about hedgehogs and I am grateful to the hon. Gentleman for raising their profile in Parliament—it is very much needed.

The point I wanted to make by going through that list—I have not gone through it all, but I have highlighted the most important conditions—is that it is an extremely contentious development in a very sensitive area of the city. Because the developers were made to provide all that information to the local community, the development is going ahead and the community is engaged with the developer in ensuring that the pre-commencement conditions are discharged. That seems to me to be a sensible way forward.

Had the developers been able to not agree, and to hope that six months down the line the Secretary of State would intervene and overrule the local authority, they might not have worked so hard to meet the conditions, and the local community might have been very upset with them indeed. As it is, as the local MP I have been able to ensure that everyone is speaking to each other about the trees and the sparrows, and about the hours during which work will take place on the site, as it abuts residential properties. The conditions have been carefully thought through by the local authority and were applied for a reason. I would like to hear why the Minister thinks—this is the important point—that those conditions do not comply with the requirements set out in the NPPF, because that is what the Government would have to show in order to have a provision in the clause to take away from local government the power to set the conditions, and give it to the Secretary of State.

The LGA and London Councils both made exactly that point to the Committee, so it is not just the Opposition who are saying that there is no evidence. The LGA said:

"The NPPF, and the associated national planning practice guidance, already clearly sets out expectations on use of planning conditions and the new primary legislation is unnecessary…There is little evidence to suggest development is being delayed by planning conditions. Planning conditions provide a vital role by enabling planning permissions to go ahead which would otherwise be refused or delayed while the details are worked out. They can also save developers time and money as they do not need to invest in detailed submissions until after the principle of the development is granted…Joint working between councils and developers is the most effective way of dealing with any concerns about planning conditions and the LGA strongly advocates the use of early, collaborative discussions ahead of planning applications being submitted for consideration."

I do not think it could be clearer.

To rub the point in, London Councils said that there was little robust evidence to suggest that the current system of planning conditions was the reason for the under-supply of housing generally or for the slow build-out rates of residential developments. It also questioned the need for the Bill to prohibit certain conditions in defined circumstances, where they do not meet the national policy test. It said that adequate tests on conditions were already set out in national policy, and that there is already a system in place that allows applicants to appeal against conditions that they consider fail those tests.

London Councils, the LGA and lots of other people who gave evidence to the Committee appear to back up what the Opposition are saying, which is that there is already a huge amount of information, advice and guidance that local authorities have to apply in setting pre-commencement planning conditions—and, indeed, conditions per se. The provisions in clause 7 are unnecessary and are further evidence that the Government are anti-localist and are taking powers back to the centre.

Gavin Barwell: We had some of this debate this morning when we considered the first group of amendments, while Mr Bone was in the Chair. Let me rehearse some of the arguments. There are four points that I want to make.

First, it is pretty undeniable that we have had a very partial presentation of the evidence we received, so I want to put on the record again what the evidence we received is. I acknowledge that it is mixed. Certainly, people came to us and said, "I don't see a problem here," but there were also plenty of people who said that there is a problem, so let me counterbalance what the hon. Lady said. The district councils network said that it supports the Government in seeking to address conditions. It was interesting that when I put it to Councillor Newman, who was speaking on behalf of the LGA, that that was the view of district councils, which make up the vast majority of local planning authorities, it seemed to be news to him.

I quoted a number of major developers earlier. Persimmon said in its annual report that,

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

new homes—

"to market".

Knight Frank stated that we

"need to address the increasingly onerous levels of pre-commencement conditions".

The NHBC survey that I quoted provided clear evidence of small and medium-sized enterprises being concerned about, yes, the speed of discharge of planning conditions, but also the extent of those conditions.

3.15 pm

I have not yet referred to some of the things said to us in the evidence sessions. For example, Mr Andrew Dixon, the head of policy at the Federation of Master Builders, told us that

"our members…consistently tell us that the number of planning conditions…has increased…significantly".—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 6, Q1.]

From the Home Builders Federation, Mr Andrew Whitaker said that pre-commencement conditions had almost become "the default". I suppose the Opposition will say, "We expect developers to say that", but Mr Tim Smith, representing the Law Society, said:

"Do you really need to approve the details of your roof tiles before you start to demolish and clear the site?"—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 58, Q107.]

We have had plenty of evidence, therefore, in both what was sent to us and what was said to us in the evidence sessions, to back up the fact that there is an issue, which has also been acknowledged, I gently point out to the hon. Member for City of Durham, by two of our own Committee members. The hon. Member for Dulwich and West Norwood gives a different explanation for this, but she acknowledged that some planning

officers were imposing pre-commencement conditions simply because they did not have time to read the full papers submitted to them—that is a clear acknowledgment of a problem. The hon. Member for Bassetlaw is not in Committee today to defend himself, but I am sure that if, when he is, he feels that I have misrepresented him, he will point that out in very voluble terms. On Second Reading, he gave a personal example of his local authority applying an unnecessary pre-commencement condition. The evidence is there, therefore, that people are concerned about the issue.

On my second point, I should declare an interest. I have known Councillor Newman since I was knee-high to a grasshopper and have been arguing with him for a long time. He is a great one for metaphors; but said that the measure was

"a sledgehammer to crack a nut"—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 23, Q31.]

First, I am not sure whether the measure is a sledgehammer and, secondly, the evidence would suggest that the issue is not a nut. I asked him, in fact, how large a nut it was, but he had no evidence that he wished to present on that front.

The quotes that the hon. Member for City of Durham has just given us from the LGA and London Councils, which I acknowledge, were basically saying that the provision is unnecessary—although I dispute that—but they were certainly not saying that it will be harmful. I think that they were accepting that Government planning guidance and the NPPF are in place, and that the correct tests are there, in terms of conditions, but they were saying that all those things are being met already, so there is no need to put them in legislation. They were certainly not saying, "It's wrong." They were arguing about whether it was necessary to put something in legislation.

I want to end on two final points. We have had a long debate on the clause, which I suspect will prove the most controversial of all those in the Bill. The hon. Member for City of Durham quoted from the NPPF, and seemed to be trying to suggest that the fact that the Government were proposing the clause was somehow evidence that they were moving away from what the NPPF says about conditions. Let me quote again paragraph 206:

"Planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects."

That is the key paragraph on conditions. She also quoted a passage relating to planning obligations, but that is section 106.

The language of the NPPF therefore clearly acknowledges that, on occasion, the best way to address an otherwise unacceptable impact of a development is to impose a planning condition. I want to make it very clear in Committee that that remains the Government's view, that there will still be plenty of occasions on which local authorities wish to impose conditions, and sometimes pre-commencement conditions, and that we have no argument with that at all. All that we are seeking to do is to ensure that what is in guidance now will be reflected in statute, so that we can make sure that we deal properly with the issue.

The hon. Lady sort of suggested, "You've been saying it's okay, but now you are saying not to do too much of it." However, Government do that all the time. If a local authority came to me and asked, "How shall we fund our local services?", I would reply, "Use council tax to fund your services," but the Government would also say, "Don't do too much of that, though; do not increase taxes by a wholly disproportionate amount, because that has a damaging impact on residents." Government do that often; it is a question of striking the right balance.

I end on a slightly partisan note, because this is the main area of the Bill on which the Government and Opposition differ. I made the point on Second Reading—and I will reinforce it now—that there is developing consensus in the House that the country needs to raise its game when it comes to the number of homes built. The difficulty with the position taken by the official Opposition is that, on too many issues, they will the ends, but not the means.

There were three examples on Second Reading. The first was on dealing with the conditions that too often slow up the build-out of schemes. The second was on permitted development, which we are about to come to. Thirdly, the hon. Member for Bassetlaw objected to the duty to co-operate, which is critical to ensuring that if one authority cannot meet its housing need, those homes do not disappear, but are shared out among its neighbours. Those issues involve tough choices.

For me, the key moment in the debate was when I asked the hon. Member for City of Durham whether she accepted—regardless of whether she thought it was justified—that imposing a significant number of pre-commencement conditions on an applicant was bound to delay the point at which spades went into the ground. She did not answer that question. It is undeniable that imposing onerous conditions on an applicant will delay the process from the point of planning permission being granted.

Dr Blackman-Woods: Actually, I am pretty certain that I did answer the Minister's question. I simply do not accept its premise, because we do not believe that pre-commencement planning conditions slow down development. In fact, much of the point that I have been making is that the system that the Government are about to put in place could slow down development, because more developers may now have to use an appeal route. We do not think that pre-commencement conditions slow down development; that is the Government's case. It is not me who has to address that point; it is the Minister.

Gavin Barwell: I will try to address it now—

Kit Malthouse *rose—*

Gavin Barwell—and my hon. Friend the Member for North West Hampshire is going to help me.

Kit Malthouse: I am grateful to the Minister for giving way, because I could not intervene on an intervention. Would the Minister care to ask the hon. Member for City of Durham how long the period was between the granting of the application of which she spoke, and a spade going into the ground, while materials, sparrows, bats and all those sorts of things were dealt with? How long did the process take?

Gavin Barwell: The hon. Member for City of Durham may intervene, but I suspect that the answer is that it has not happened yet. I was going to come to that, but the hon. Lady gave a clear response to my point, so let me deal with her two points in turn.

[Gavin Barwell]

The hon. Lady's first argument is that there is a danger that the process will lead to more appeals, and will therefore slow things down, not speed them up. I do not agree, and I will make it clear why. If, at the moment, an applicant does not like the pre-commencement conditions imposed on them, they already have the right to appeal. It seems that there is no evidence that they are any more likely to appeal as a result of the fact that the local authority will now not be able to impose those conditions on them than they would have been otherwise.

The second argument, which is irrefutable, is that if an applicant is asked to do a large number of things before they can start any work on site, that is bound to delay the start of work on site. On most things, my hon. Friend the Member for North West Hampshire is beyond reproach, but on this issue, I blame him, because the hon. Member for City of Durham was in the midst of giving us a long and detailed list, and he rather hurried her up, so we did not get the full list. I managed to scribble down at least six of the conditions she mentioned. One condition was details of the materials to be used. That does not necessarily have to be a pre-commencement issue, but I accept that it is not that onerous. However, the designs of new homes for bats and birds will clearly take some time, as will the noise mitigation scheme, a drainage scheme, and tree protection schemes. Archaeological work is necessary and will always have to be pre-commencement, but it clearly takes time. All those things take time to design, work up, go to the local authority with, and get discharged.

It is difficult to comment with certainty, not knowing the site in question, and I would not want, without knowing the site, to express strong opinions, because the hon. Lady will have pictures of me printed and shown at local protests or something. None the less, some of those things, all of which it is important to deal with, can arguably be dealt with later in the process. It seems unarguable that the hon. Lady's council requires of the developer a significant chunk of work that will take time and will delay the point at which the developer can get on site. The question of how many of those conditions are a necessary delay to the development is a legitimate source of public debate. The legislation tries to weed out those that are not necessary and focus on those that are.

Jim McMahon *rose—*

Gavin Barwell: I will take one final intervention and then conclude my remarks.

Jim McMahon: I fear that the Minister has chosen the wrong application to pick on, because it is a very particular one—for anyone without knowledge of it to say what should or should not be allowed is embarrassing, to say the least. In a local context, those issues could well be extremely important. If you, Mr McCabe, lived next door to that development, you would want to know that the noise mitigation element would be dealt with before it was approved. If it could not be dealt with, we would all want to have a say on whether it was appropriate for the development to go ahead at all. With all due respect, I am not convinced that this was the right battle for the Minister to choose.

Gavin Barwell: I thought that I had been careful, but perhaps I was not careful enough; I think I said that I did not know the site in question and could not comment on the detail.

Let me comment instead on a generic application in which these issues arose. My view, generally speaking, is that materials are important, particularly in a conservation area, but their colour does not necessarily need to be agreed before a spade can go into the ground. The situation of bats, birds or other species that inhabit a site clearly needs to be dealt with before their habitats are disturbed. However, on a large site, of which a part was existing buildings and another part was a wooded area where those species had their homes, work could be done on the buildings before touching the habitat. Noise mitigation needs to be dealt with at the outset, because clearly initial works can be noisy. On drainage, a clear commitment would be needed at the outset that the drainage solution would be sustainable, but the detail would not be needed until the detailed works were to be done. Archaeology clearly needs to be considered.

On a generic site, some of those points are clearly pre-commencement, but I argue that some are not. It cannot be denied, however, that the more a developer is asked to do before a spade goes into the ground, the longer the wait until that happens. The Government are therefore quite right to focus on this issue, alongside lots of other issues such as raising the performance of our utility companies, resourcing our planning departments better so that they can take decisions more quickly, and getting section 106 agreements more quickly.

The hon. Member for City of Durham cited a statistic that gets to the core of the issue. The coalition Government's planning reforms have done an amazing job of increasing the number of homes given consent through our planning system. In the year to 30 June, a record number of homes were given consent. However, we have seen a growing gap between consents and homes being started, because the number of homes being started has also gone up but not by anything like as much. A strategy to get the country building the homes we desperately need therefore needs to address bridging that gap. My contention is that these pre-commencement conditions and other abuses of planning conditions are one issue, albeit not the only one, that we need to address in order to do that.

Dr Blackman-Woods: I will start by addressing the specific question asked by the hon. Member for North West Hampshire: when did the scheme I mentioned start on site? Planning permission came through in April and the developer was hoping to start on site in August. Actually, I got a phone call to say that there was a delay in the system. Hon. Members are right that there was a delay in the system, but it had nothing whatsoever to do with the pre-commencement planning conditions, which were not mentioned at all; it was because the Brexit vote meant that the developer lost its funding and had to go out to the market again to get support for the development. It was therefore unable to start on site until October—and start in October it did. We have had the first meeting with residents, and they all agree that the pre-commencement conditions were essential.

3.30 pm

We do not accept that pre-commencement planning conditions are the reason for the slowness of build-out; we think that that has something to do with the general market conditions in this country. The Minister will know that volume house builders hold on to land and build out at a particular rate to protect the value of their product. We need major interventions in that system. But even though he believes that pre-commencement conditions produce delays in the planning system, he does not need the clause. He does not need the Secretary of State's intervention and all the things that go with it. The Minister simply needs to tell local authorities that they have to abide by the national planning policy framework and not deviate from it in the setting of pre-commencement conditions. Unnecessary conditions and all the problems that he seems to have identified will then not emerge, because they will not be possible. We profoundly disagree with him and his colleagues on this point, and on that basis I would like to press the amendment to a vote.

Question put, That the amendment be made.

The Committee divided: Ayes 4, Noes 10.

Division No. 1]

AYES

Blackman-Woods, Dr Roberta	Hayes, Helen
Cummins, Judith	McMahon, Jim

NOES

Barwell, Gavin	Malthouse, Kit
Colvile, Oliver	Philp, Chris
Doyle-Price, Jackie	Pow, Rebecca
Green, Chris	Tracey, Craig
Hollinrake, Kevin	Villiers, rh Mrs Theresa

Question accordingly negatived.

Question put, That the clause stand part of the Bill.

The Committee divided: Ayes 10, Noes 4.

Division No. 2]

AYES

Barwell, Gavin	Malthouse, Kit
Colvile, Oliver	Philp, Chris
Doyle-Price, Jackie	Pow, Rebecca
Green, Chris	Tracey, Craig
Hollinrake, Kevin	Villiers, rh Mrs Theresa

NOES

Blackman-Woods, Dr Roberta	Hayes, Helen
Cummins, Judith	McMahon, Jim

Question accordingly agreed to.

Clause 7 ordered to stand part of the Bill.

Schedule 2

PLANNING CONDITIONS: CONSEQUENTIAL AMENDMENTS

Question proposed, That the schedule be the Second schedule to the Bill.

Gavin Barwell: I will not delay the Committee for long. Schedule 2 sets out the amendments that need to be made to the Town and Country Planning Act 1990 as a consequence of clause 7(1), which will allow the Secretary of State to make regulations that prohibit local authorities from imposing certain planning conditions in circumstances to be prescribed when they grant planning permission.

The amendments in schedule 2 seek to ensure that any such regulations the Secretary of State may make under clause 7(1) would also apply to conditions that are imposed via the ways in which it is possible to gain planning permission other than by application to the local planning authority. That includes planning permission granted by: development order; local development order; mayoral development order; neighbourhood development order; applications to develop without compliance with conditions previously attached; simplified planning zones; development in enterprise zones; orders requiring the discontinuance of use or alteration or removal of building works; and appeals against enforcement notices. We have already debated the principles.

Question put and agreed to.

Schedule 2 accordingly agreed to.

Clause 8

REGISTER OF PLANNING APPLICATIONS ETC

Jim McMahon: I beg to move amendment 28, in clause 8, page 7, line 21, at end insert—

"(e) information on the number of permitted demolition of offices for residential use to a similar scale including—

(a) the impact on a local plan;

(b) an estimate as to how many homes the development will deliver and

(c) a consultation with the local authority regarding the effect of the change of use on any urban regeneration plans."

This amendment would ensure monitoring of the impact of permitted right of demolition on offices, on urban regeneration that requires office space and on the provision of housing.

The Chair: With this it will be convenient to discuss amendment 29, in clause 8, page 8, line 10, at end insert—

"(9) The cost of compiling a register and gathering the information to underpin it should be met by the Secretary of State."

Jim McMahon: I have been brought off the subs bench to do this. I am quite excited about the debate we have had and the evidence we have heard, because I am a localist; I believe that communities should have a say and be able to direct their futures in the most appropriate way. Neighbourhood planning gives them the ability to do that, framed in the context of a national plan and the land supply. That means national Government can achieve what they want to achieve, local authorities can take a view of the wider area and, integral to that, the community has a strong voice. That is why I am slightly at odds with permitted development.

A number of representations have been made over the years that are at odds with the "community first" approach that we have been talking about. The Local Government Association's evidence frames that quite well. In the survey it carried out of its members, to which 93 local authorities responded, 82% were making a loss on maintaining that process. It is important we

[Jim McMahon]

get some comfort from the Minister today and accept that local authorities are taking on an additional burden that they should be compensated for.

Moreover, that flies in the face of what we might assume would happen. Let us take light industrial and office accommodation as an example. The view surely is, "Well, there's all this accommodation that isn't being taken because the market demand for it isn't there, so it's far better to put that to good use as residential accommodation." However, that is not what we have seen. Areas often have low office demand and low residential demand going hand in hand. I could take Members to Oldham town centre and show them empty office blocks, and alongside those is an empty potential residential conversion that, because demand has not taken hold, is commercially unviable.

We have seen a displacement in areas where there is significant high demand. In some London boroughs, for example, we have not seen empty office blocks being converted into solely residential accommodation; we have seen profitable businesses and charities that are there for the community benefit and value being displaced by landlords, who recognise that it is more financially beneficial to get rid of a tenant who is not paying anywhere near enough. They convert the building for residential use and displace the local business or charity in favour of greater profits.

Don't take my word for it. We have examples in Barnet, where 100 small businesses and charities were displaced with just four to six weeks' notice. We have a situation in Islington where 71 office buildings have been converted to residential accommodation. More than 40,000 square feet of office accommodation has been taken in that one borough, where there is demand for that facility.

Chris Philp: Is not Islington, along with many other London boroughs, now subject to an article 4 direction, which will prevent the conversions that the hon. Gentleman describes from taking place in future?

Jim McMahon: That is a fair point about where things are today, but the damage has been done and we cannot change things back to what they were. The phrase "a sledgehammer to crack a nut" has been used probably once too often today, but article 4 is a good example of a very big sledgehammer being used to crack a very particular nut. Article 4 affects everybody in the vicinity or within the boundary and obliges them to comply with the directive. I am talking about a particular problem that has been brought about by the extension of permitted development.

Dr Blackman-Woods: My hon. Friend is making a powerful case. Does he agree that in policy-making terms it is nonsense to set up a scheme to relax permitted development rights, recognise that it causes a huge problem and then introduce another system to try to counteract the adverse consequences of the original policy? All the Government had to do was allow local authorities to grant planning permission in the first place, rather than introducing a relaxation of permitted development rights.

Jim McMahon: My hon. Friend is absolutely right. A lot of people are of the view that permitted developments of this type mean that an empty office is simply converted—from the outside there is very little difference, but it is what happens inside that changes, and that is surely up to the person who owns the building—but the rules actually allow for a building to be completely demolished and then rebuilt to a similar scale. That can change the street scene significantly, so it does go further.

Let us also consider the location of some of the buildings. Take an everyday town centre. It is easy to imagine two restaurants or bars operating with an office block in between. If the office block is converted under permitted development, the tenants who move in are forced to live with the noise nuisance of a pre-existing use in an acceptable location. What is not taken into consideration is how to create a vibrant community that has the requisite facilities, amenities and, importantly, quality of life. For a lot of people, permitted development as it stands does not have that balance in place.

The LGA, which is the voice of local government, has said that. It consults its members, who have been clear in numbers that the problems with permitted development should be looked at. It is odd that a Government who say that they are all about community voice and control—about people being empowered, for once, to have some control over what their communities look and feel like—are not tackling permitted development in the right way.

If we take ourselves out of the town centre, we could go to an industrial estate where small industrial units can be converted for residential use. It is perhaps okay if a unit is converted, but what about the existing users who suddenly have a barrage of complaints from the local authority about the noise nuisance from their pre-existing use, which might have been going on for decades? There might be early-morning or late-night deliveries at what is a predominantly industrial location that has suddenly changed into a residential neighbourhood, without the required facilities or amenities. It is a really big issue.

We have talked a lot about bricks and how important their colour and texture are. We have discussed whether they are important in pre-commencement or could be dealt with later. At least we are talking about them. If someone goes for a change of use under permitted development, very little attention is given to the quality of finish, design and detail. An entire shopfront has been removed in my town. Imagine how a shopfront block looks: there is a hole on the ground floor where a full shopfront used to be, with a sign on top. I know of several examples where the shopfront has been taken away, leaving an exposed girder where the sign used to be, and a completely inappropriate insert has been added that has no relationship to the wider street scene. In a normal planning application, such issues would be negotiated with a developer to ensure that they were dealt with appropriately.

We must recognise that permitted development flies in the face of the community voice and empowerment that we have been talking about.

Chris Philp: On the question of shopfronts, class A1 retail use, to which the hon. Gentleman is referring, is not subject to permitted development rights, which apply only to class B1 office use.

3.45 pm

Jim McMahon: Of course, what I am talking about is the physical appearance of a shopfront, not necessarily the fact that a building was previously a shop. A building may be in use as an office but have the external appearance of a shop. It is that conversion that I am talking about. I am thinking in particular of professional services businesses that are based in accommodation with a shopfront façade but where there is office-type use behind that. That is the point that I was getting to.

Whatever our view about the finish, we need to accept that when we are talking about a policy of empowering communities and giving them a voice and a say, it is important to manage expectations to ensure that they are not let down after the fact. Permitted development flies in the face of that empowerment, because it takes power and control away from them. If nothing else, we should at least accept that permitted development rights are a significant burden for local authorities, and when we talk about capacity being an issue, we should at least ensure that local authorities are given the finances to administer that policy in the right way.

Helen Hayes: It is a pleasure to serve under your chairmanship, Mr McCabe. The gathering of data on homes delivered through permitted development rights is a small beneficial step. It is long overdue; it should have been introduced when permitted development rights were extended. It remains a significant problem that although the negative impacts of the extension of permitted development rights are widely reported, there are no consistent data to monitor those impacts, and we therefore cannot have the debate that we need in the House and elsewhere about this significant problem.

Concerns have been raised with me consistently, ever since the permitted development rights policy was introduced, about the size and type of new homes that are being delivered under those rights; the quality of those homes; the lack of section 106 contributions to provide properly for the physical facilities and public services that an expanding residential population needs; the lack of affordable homes; and, particularly in London, the loss of much-valued employment space for small and medium-sized businesses. We cannot quantify the scale of the problem, because the policy was flawed from the start.

Although the small measure in the clause will help with the monitoring of data, I am concerned by the fact that the Government are extending permitted development rights to include the demolition and rebuilding of office accommodation for residential purposes. That brings with it exactly the same concerns that I have about the previous extension of permitted development rights—but more than that, it will result in local authorities' total loss of control over the quality and aesthetics of new development. As we debated earlier, those are often among the issues that matter most to local communities and make the difference between something being acceptable and not being acceptable.

The Minister argued on Second Reading that permitted development rights are helping to accelerate the delivery of new homes. The delivery of new homes at speed and at scale is of course of utmost importance, but the housing crisis is more complicated than that.

Kevin Hollinrake: The hon. Lady refers to the Minister's comments about speeding up delivery. Does she accept that permitted development rights have in many cases done exactly that? She talks about the negative consequences of that policy but has not spoken about the positive consequences. Does she accept that there have been positive consequences, including the delivery of more residential units?

Helen Hayes: I was just about to say that in addition to the numbers, which I do not dispute are important, the size and type of homes that we are delivering matters. It matters whether we are delivering homes that families can live in and have a good quality of life in, or only homes that are too small even to fit adequate furniture into. Minimum space standards matter, and the Government have failed to address that issue. The provision of amenities matters. It matters whether there is a local park that is properly funded through the planning process. It matters whether the roads and pavements are of an appropriate standard, whether there is lighting and whether our neighbourhoods are attractive to live in. It matters whether there are places in schools and GP practices for an expanding population to access.

Above all else, affordability matters to my constituents. It is simply not fair and not appropriate that new homes are allowed to be delivered with no contribution at all to the affordable housing that we need more than any other type of housing in London. As a Member of Parliament for a London constituency, the Minister should, quite frankly, know that.

The extension of permitted development rights is a disaster for the delivery of the high-quality neighbourhoods with good facilities and services that we all want to see. We want to see the right numbers of homes being delivered, but we also want to build attractive and successful communities for the future, not tomorrow's regeneration projects. I am deeply disappointed that, through the Bill, the Government are trying to patch up a broken policy, rather than accepting that it is not working in the way it needs to and reforming it to make it more fit for purpose, so that we can deliver not only the number, but the type and quality, of new homes needed within the successful neighbourhoods that we all want to see.

Dr Blackman-Woods: My hon. Friends the Members for Oldham West and Royton and for Dulwich and West Norwood have done an effective demolition job on the Government's case for promoting permitted development. The Opposition are on record, on a number of occasions, as being totally against the relaxation of permitted development rights for all the reasons that my hon. Friends outlined, including the very poor-quality development that often ensues from developers taking a permitted development route.

It is not that we are against a change of use from offices or agricultural buildings to residential; we just think that it is critical that local people have a say on whether those changes of use take place. The process should take place through the planning system, not through permitted development. We are living with some of the huge consequences, such as poorly planned developments and neighbourhoods, emerging from too much permitted development.

[Dr Blackman-Woods]

On amendment 28, we are not in favour of permitted development, but if the Government are in favour of it, it makes some sense that they might actually want to know what is going on with it. To date, they are probably not that aware. The compilation of the planning register would elicit further information from local authorities about what is happening with regard to permitted development. The circumstances set out in clause 8 are too restrictive and will not capture some of the information that local authorities have told all members of the Committee is very important to them.

How many additional homes have been created through permitted development? What is the impact on any local council regeneration plans, and on the local plan? Those questions are important. Let us begin with the local plan. If a lot of windfall sites have emerged through permitted development, and a lot of homes—even of relatively poor quality—have been created that contribute towards meeting the housing need, there might be an impact on local plan provisions. The local authority might like an opportunity to tell the Minister and everyone else about the impact of permitted development on the local plan. It will also want to be able to give information not only on the type of housing delivered but on the number of homes, who they are for, whether they are affordable, their quality and a whole lot of other issues.

My most significant point about the amendment is what it would mean for regeneration, and I am really interested to hear what the Minister says about that. As my hon. Friend the Member for Oldham West and Royton touched on earlier, a number of cities and towns have areas with empty shops, pubs or offices, but they are empty for a reason: the local authority has or is developing a plan to regenerate the area. Local authorities have told us that a developer will now be able to come along, get the office block and say, "I can make a quick buck here by converting this block into housing through the prior approval route"—and bang goes the council's ability to regenerate the whole area in line with a local plan that has emerged through the neighbourhood planning system or consultations with the community. That does not seem a very sensible way forward.

If I were the Minister, I would want to know whether a policy of mine was actually impeding local authorities from regenerating their areas because permitted development was getting in the way. I would want to do something to put that right and to help the local authority with that process. The Minister will know that the prior approval system in place for permitted development simply does not give a local authority the tools to turn down a permitted development, either for regeneration reasons or because it severely, or even mildly, affects the authority's local plan.

Indeed, the prior approval system is very complicated. The Government make much of the fact that they have simplified the planning system; I could not help but smile when I saw the statutory instrument that they passed last year, the Town and Country Planning (General Permitted Development) (England) Order 2015, which is 162 pages long—such have been their extensions to permitted development. Each class of permitted development has different prior approval conditions, but none of them allows consideration of the issues addressed by our amendment. For instance, for a change from offices to dwelling houses, the local planning authority has to consider

"whether the prior approval of the authority will be required as to…transport and highways impacts…contamination risks…and…flooding risks",

but it cannot take account of anything else. If the development will impede a regeneration scheme, the authority cannot even consider that. If there are huge energy conservation issues because the office block has poor energy efficiency, the authority cannot do anything about that either. If it thinks the materials are wrong, it cannot do anything about that. If it absolutely needs affordable housing in the area, it cannot do anything about that. There is really a very small list of things that it can do anything about, and that list certainly does not cover the issues in the amendment.

4 pm

So what about the change of storage or distribution centres to dwelling houses? Given where storage or distribution centres are likely to be based—they could be on an industrial estate or at the edge of it, or on the edge of town—one would think there might a slightly longer list, because of the need to protect future residents and occupants. A few more prior approval criteria are listed, which is good. Air quality is included, because the development could be located within a business area; that is good to see. The list also includes transport and highways, contamination risks, flooding risks, noise impact and cases in which the authority thinks that the mix is not appropriate. That list is good but does not include any of the issues we have raised in the amendment.

We then have changes from agricultural buildings to dwelling houses. That is interesting, because in that case we have a slightly longer list that includes transport and highways, noise impact, contamination risks, flooding risks, whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a class C use, and the "design or external appearance" of the building. It is interesting we have that for an agricultural building but not for any of the other categories of change of use. One can only ponder why the Government think external appearance is important if the development is in a rural area, but in an urban or suburban area the appearance of what materialises at the end of the permitted development process is of no interest at all.

I hope the Minister will be able to enlighten us as to why such a limited set of circumstances can be taken into account by local authorities when deciding whether to grant permission or whether an application needs to go through a prior approval process. I for one would like the Minister to look at that. We know—we will talk about this in a moment—that the quality of what is delivered through permitted development is often very poor indeed. A lot of properties quickly end up not being fit for purpose, and there are huge conflicts of interest. The Minister will know that, because his predecessor had to look at a lot of complaints from residents who perhaps unknowingly had a music venue next door to them that had a licence to 2 am, 3 am or 4 am. Once the office was converted into residential accommodation, residents wanted the music venue to be closed down. Understandably, the people who used the music venue said, "Excuse me, we were here first."

The music venue might have been going for 30, 40 or 50 years. Should those people be denied their music venue simply because the Minister's scheme for prior approval did not think about noise?

The list we have given in the amendment is not a comprehensive or exhaustive one. I am sure we could add lots of other things to the information that local authorities might be required to give that would help the permitted development system work better. I hope the Minister will be grateful for that, but he might not want that information added to what is, again, a new burden. He will say, "Ah, the hon. Lady is being inconsistent again because she is adding to the considerable additional burden by asking local authorities to give information in a whole variety of circumstances that are not on the Government's list." However, I have a way of dealing with that—amendment 29.

Amendment 29 accepts that, with the register, the clause is putting additional burdens on local authorities, but it also recognises that there is a whole lot of other information that the Minister should gather if his Department really wants to understand what is going on. Amendment 29 therefore says that if the Minister thinks that local authorities should compile the register, then he ought to pay for it and not—once again—put an additional financial burden on to local authorities.

This morning, I was worried that the Minister was back-tracking a bit on his understanding of the huge resource problems being experienced by local authorities, so I thought that I would bolster the case that the Opposition are making about what a huge issue the lack of resourcing of local planning departments is and refer to the National Audit Office report produced at the end of 2014. For planning departments, it makes sobering reading, because 46% of their budget was cut between 2010 and 2014. Just when the Government are asking local authorities to step up to the mark, to get more planning permissions, to do more and to get the planning system moving, the budgets are being cut by half.

From the report, it is clear that the largest spending reductions in councils have been in planning and development services, in both single-tier and county councils. The average reduction, as I said, is 46%. That is a huge amount of money for planning departments, and extremely difficult for them to make up, whether in the short or the long term.

Jim McMahon: The resources of local government are a critical issue. Many are looking at the next three to four years and wondering how on earth they will make ends meet or cover the costs of adult social care and children's services. When faced with such choices, clearly the councils go to the back office—or what people consider the back office until they are an applicant who needs to use the planning system when, all of a sudden, it becomes a front-line service. If the Minister is determined to make everything work, it is important that the proper resource is given. We have been given some hint about a White Paper that is due and about conversations that might or might not be taking place, and we are intrigued, but a bit more certainty would go a long way.

Dr Blackman-Woods: My hon. Friend makes an excellent point. He more than any of us in Committee understands the day-to-day, lived experience of people in local authorities and just how difficult it is to keep managing, in particular, the huge portfolios that some of our local planning officers have to on such limited resources and—this is pertinent—with no end in sight. We do not know what is to come in the Minister's White Paper, but there is no clarity at all about when the contraction of budgets in local planning departments will stop. At the moment, we have contraction figures right up to 2020. If the Minister is to reverse that and put in additional resources, that would be a good thing, but at this point in time we do not know whether that is the case.

We do not know whether there will be any means by which local authorities can fund the putting together of the register. Several people who gave evidence to the Committee were at pains to stress to the Minister that responsibility for an operation of this type will fall on planning policy officers. Some district councils have only one planning policy officer to do all their local plan-making work, to support all neighbourhood planning and to do all the work required for a register. That just does not seem possible, or possible to deliver.

We have made the case that the planning register as proposed under clause 8 is wholly inadequate. If the Government did not rely so heavily on permitted development, it would not be necessary anyway. If the Minister wants to stick to his thoroughly discredited permitted development scheme and ask local authorities to produce a register, he should also pay for it. I look forward to hearing what he has to say.

Gavin Barwell: It is a pleasure to welcome the hon. Member for Oldham West and Royton to the Front Bench as a substitute, as he described himself. I am a keen fan of the beautiful game, and I observe that substitutions happen in one of two circumstances: either a team are winning and coasting, so give some fresh talent a chance, or they are struggling and bring on someone different. I shall leave it to Committee members to decide which of those sets of circumstances applies now.

I thank Opposition Members for tabling amendments 28 and 29 on changes to the planning register. Before I address them specifically, perhaps I can say a few general words about clause 8, which, as we have heard, aims to ensure that both local and central Government further understand the contribution that permitted development rights make to increasing the housing supply, while also increasing transparency about development proposals in an area.

The Government have introduced a series of permitted development rights for change of use to residential use since January 2013, and they are playing an important role in supporting the delivery of the homes that our country so desperately needs. We do not know exactly how many homes they have delivered, which is part of the purpose of the clause, but we have two bits of data that I shall share with the Committee.

First, since April 2014 there have been more than 6,500 applications for prior approval for changing from office to residential. We do not know how many housing units have been created, but we do know that. Secondly, the *Estates Gazette* reported that more than 5,300 new homes have been started in London as a result of permitted development, although I cannot tell the Committee the source of the data. I shall return to the

[Gavin Barwell]

remarks made by the hon. Member for City of Durham later in my speech, but it is worth putting clearly on the record now that 5,300 families in London have had the opportunity of a home as a result of the policy. Whatever other critiques may be made of it, that important fact should not be lost in the balance.

Clause 8 enables the Secretary of State to require local planning authorities to place information about prior approval applications or notifications for permitted development rights on the planning register. For the first time there will be consistent public-access data on the number of homes being created through permitted development rights in England. Details of which prior approval applications or notifications should be placed on the register, and specific information relating to them, will be provided in subsequent regulations, which we expect to be made available during the passage of the Bill.

Before I discuss the amendments in detail, I make a general observation: good-quality data are important in assessing public policy. My officials know me well enough by now to understand that I am interested in data and in understanding figures properly, so that Ministers can take good decisions based on clear evidence. The data collected under the clause will be important with respect to the main way we measure the success of the Government's housing policies—the net additions measure of housing supply. I shall not detain the Committee too long on one of my pet subjects, but Members might be aware that data on starts and completions are published quarterly, and we then get annual data on net additions, which takes in not only starts but changes of use and permitted developments. That way, we get a total picture in terms of the net change in the number of homes.

Interestingly, even the starts figure in the net additions data is not consistent. If one adds up the net starts for the previous four quarters, one will not get the same total because they are measured differently. That often creates room for people to have political fun by using different figures. Even for those who oppose permitted development, clause 8 is good because it will provide data on the effect of the policy, which can inform our political discussions of it.

4.15 pm

Amendment 28 seeks the inclusion on the register of specified information relating to applications under a permitted development right for the demolition of offices and replacement build as residential use. The Government announced in October 2015 that we would introduce such a right. In shaping it, we will consider what matters should be included in a prior approval application. Clause 8 will not require local planning authorities to collect or record any additional information beyond what is already submitted by the developer with their prior approval application or notification, such as information relating to flooding where that is a matter for prior approval.

We agree that it is important to know how many homes are being delivered through permitted development rights. The hon. Member for City of Durham has already referred to the Town and Country Planning (General Permitted Development) (England) Order 2015. That order, as amended, already requires that applications for change of use to residential provide information on the number of homes to be delivered. The same will be true of the permitted development right for demolition and replacement as residential use when it is introduced. Clause 8 will require that information to be placed on the register. However, the hon. Lady's amendment would go much further. As she correctly predicted, it would add an unnecessary burden and costs to local planning authorities because it would require additional information beyond what is required by the right, and it would require local planning authorities to undertake much wider assessments relating to matters not covered by the prior approval application.

With regard to amendment 29, there is already a requirement, imposed by section 69 of the Town and Country Planning Act 1990, for local authorities to collect and place on the register information on planning applications. Let me be clear that we are not proposing that local authorities compile or create a new register. We know that many local planning authorities—including Durham and Oldham, which are in the constituencies of the hon. Members who tabled the amendment, as well as my own borough of Croydon—already voluntarily capture some types of prior approval applications for the change of use on their register.

We do not anticipate that clause 8 will impose a burden on local planning authorities, because it relates only to information that they will already have received as part of the prior approval application. It will help the Government and communities to further understand the contribution that these rights are making to delivering new homes. I hope that hon. Members agree that recording information, in particular on housing numbers, is a good thing.

Dr Blackman-Woods: I want to return to the Minister's point about planning permissions being put on the register. Planning permissions do not completely cover the cost of determining a planning application, but more money certainly goes to the local authority than under the prior approval system. Although there might be a case for additional resources to allow local authorities to put planning permissions on the register, does he accept that requiring them to put prior approvals on the register when they receive so little money from them is really a burden of a different order?

Gavin Barwell: I tried to answer that question in my remarks: we do not believe that there is any additional cost in requiring local authorities to place these applications on the register. The register is not new; it already exists and holds information on individual planning applications. We do not think that the requirement will place a new burden on planning authorities. However, the Department will carry out an assessment to confirm that before introducing regulations. I hope that reassures the hon. Lady.

Let me turn to some more generic points about permitted development. The hon. Member for Oldham West and Royton spoke passionately about his views as a localist and suggested that this area of policy points in the opposite direction. I understand his point, but I think it all depends on how we look at things. Our planning system is built on the understanding that people do not have the right to do whatever they want with their land; they need to seek permission from the

state because what they do might affect the amenity of adjoining landowners or people who live on adjoining sites.

However, there has always been an understanding that, for certain kinds of applications that fall below a particular de minimis threshold, it is possible to proceed without having to make a planning application. A good example is that some of the smallest, single-storey extensions to domestic properties can proceed as permitted developments. That has been in our planning system for a long time. As the Government wish to drive up supply, they have extended that right to others.

There is no denying that permitted development removes from councils the right to consider a full planning application. It limits the freedom they have to the matters specified in any prior approval. However, it also gives the owner of a building the freedom to do what they will with their land because we have judged that the issue is unlikely to have a significant impact on adjoining owners.

Jim McMahon: Does the Minister accept, in this context, that the council is a community? The elected members of the council derive from the local community and are elected by it to represent it and sit on planning committees that make decisions based on the community interest.

Gavin Barwell: I would not accept that a council is a community, but I certainly accept that it comprises the elected representatives of that community and speaks with the authority of the community, if that is helpful to the hon. Gentleman.

Stepping aside from the controversial topic of office-to-residential conversion, the question that we should ask ourselves when deciding whether something should be a permitted development right or require a full planning application is whether the change being made to a property is sufficiently significant that it is likely to have implications for adjoining owners. If it does have implications, there are clearly arguments that it should go through the planning application process. I was trying to make the point that the Government did not invent permitted development—it has existed for a period of time—but have chosen to extend it to particular classes of conversion.

The hon. Member for Dulwich and West Norwood, who represents a constituency not too far from mine, spoke passionately, as she did on Second Reading, of her concerns about the permitted development process. It is entirely legitimate to say that, compared with the full planning application, the authority does not receive a section 106 contribution for local infrastructure or for affordable housing, and neither do the space standard rules apply. She raises legitimate concerns.

Weighed against that, we must look at the contribution of the policy to housing supply. I believe that in Croydon—my constituency neighbour, my hon. Friend the Member for Croydon South, also sits on this Committee—the policy has certainly brought back into use buildings that would otherwise not have come back into use. Therefore, it has contributed to supply. The debate on space standards is particularly interesting. We certainly need to ensure that at least a proportion of our housing stock is sufficiently large, providing the space to accommodate families with particular needs. There is a much more difficult balance to strike on whether we should say that all homes must meet a minimum standard, or whether we should allow flexibility. Strong arguments can be made both ways.

I visited a site just south of Nottingham at the end of last week, where I saw a good mixed tenure development with some owner-occupied housing. The housing association also provided some shared ownership properties and some affordable rent. When the Homes and Communities Agency master-planned that site before selling it on to the developer, it insisted that all the homes built on it meet the national space standard. Perhaps predictably, the developer argued to me that it would have preferred to have that requirement only for some properties, because it would have been able to build more homes, which is clearly in its commercial interests.

Interestingly, the housing association made the same argument. It needed some stock with sufficient space to accommodate families who perhaps needed a carer, or included somebody in a wheelchair. However, the association believed that housing need in the area was sufficiently acute that it would rather have had a compromise whereby some of the homes had that space standard but it could have got a larger number of homes overall out of the site. I am not expressing a view one way or the other; I am simply saying that there is a choice to be made between overall supply and space standards.

Helen Hayes: I simply do not accept that, in seeking to meet the need for new homes, we aspire to rabbit-hutch Britain. There are of course families who have exceptional needs for space, but every family deserves a home into which they can fit the right amount of furniture and within which their waste and recycling storage commitments can be met and there is appropriate storage for cycling equipment and all the other stuff that people accumulate in the course of family life. We should not accept that families being asked to live in homes that are too mean in space terms so they can afford an adequate and appropriate standard of life is a fair compromise anywhere in the country.

Gavin Barwell: The hon. Lady makes her point passionately. Let me be clear that I do not think anyone wants people to live in rabbit hutches. Her own local authority—her constituency crosses local authority boundaries, so I should be clear that I am talking about the London Borough of Lambeth—has given planning permission to a scheme in the north of the borough by Pocket Living, which I had the opportunity to visit. As part of a deal with the GLA, that developer has been given the flexibility to develop homes below the minimum space standard, and those homes have proved popular with young professional people.

A journalist gave a rather slanted representation of a presentation I gave at party conference in which I talked about housing for young people. I ran through a whole load of things that we could consider as part of that, and I referenced that Pocket Living scheme. The journalist wrote an article saying that I wanted people to live in rabbit hutches. Interestingly, that night I was speaking to students at a university and one of them had read the article in question and said, "I'd just like to say that, given the choice of being able to buy a small home of my own or there being bigger homes that I can't afford, I'd be interested in looking at that flexibility." Every single student in the audience agreed.

Helen Hayes: To be clear, developments of the type produced by Pocket Living are a specific type of housing—they are a niche in the market. There is certainly a place for that type of accommodation in the market, and Pocket balances space standards and quality particularly well for that niche, but we are talking about the much broader issue of national space standards for all types of homes, and particularly family homes. I have too often seen examples of schemes up and down the country that are not built to the national space standard, whose quality is too mean and that do not provide the best possible basis for successful communities or places that people want to live in.

Gavin Barwell: Well, it may be that the hon. Lady and I are not as far apart as I thought we were, because I agree with that. People have different requirements at different ages, and it is certainly important that adequate space is provided for family housing. She may agree with the point that I am going to make. I was going to close by giving an example of a permitted development conversion that I had the opportunity to see in Croydon. She may want to go and have a look at it herself.

Kevin Hollinrake: I quite agree with the hon. Member for Dulwich and West Norwood about family homes, but where the opportunity exists to innovate and create homes for young people and first-time buyers, particularly in areas of high house prices, should we discourage that purely on the basis of space standards?

Gavin Barwell: I suppose the story I told that prompted the hon. Lady's intervention interested me because one might to a degree expect private developers to look to maximise the units that they can build on a site and their commercial return, but what was striking about that conversation was that the chief executive of a housing association also wanted that flexibility. He saw clearly that there was a trade-off between having homes that were fully accessible and fulfilled the space standard and maximising the number of homes for vulnerable people that he could have on the site. There is a debate to be had, but I do not think that the hon. Lady and I are as far apart on this as I thought we were.

Let me give an example. There is a building in Croydon called Green Dragon House, which was a fairly old office building that was not wholly vacant but had very limited use. It has been converted into 119 homes—a mixture of one and two-bed homes. It is a little like the Pocket housing schemes. It is very high-spec—the quality of the finish is very good—but the rooms are smaller than the national space standard. Interestingly, what is not taken into account is that there is a huge amount of communal space. Virtually the whole of the first floor of the building is given over to a high-standard communal lounge, and the whole of the roof is a terrace, which is communal space for residents. In a way, it is a different vision of how people might live, and it is targeted very much at young professional people.

Helen Hayes: The Minister is being generous with his time. I will simply say that the scheme he describes sounds commendable. It also sounds like exactly the kind of scheme that a local authority would have given planning permission for. The point about permitted development rights is that we cannot leave to chance whether the development industry will deliver to that high standard. We have to secure that high standard through the planning system.

4.30 pm

Gavin Barwell: Clearly, part of the issue is that these schemes were not coming forward before. The cost of the conversion, if it goes through the full planning process, meant the schemes were often not viable, and permitted development rights have allowed some of these schemes to come forward that would not otherwise have done so.

I have had an interesting exchange of views with the hon. Lady. As I said, I understand her point of view, but these things have to be balanced against the urgent need to drive up supply of housing. She will know that there is no part of this country with a greater gap between what we are currently building and what we need to build than the city she and I represent. There are different views in the House about permitted development, but whatever one's views on the issue, this is a good clause because it will give not only the Government but Members of the House and the wider world that is interested access to data, which we can then use as we debate this policy.

Jim McMahon: I thank the Minister for that response. Like him, I am a geek when it comes to data. I love nothing more than spending time in the library on the Office for National Statistics website—that counts as entertainment for me. However, I am also aware that data can often be used as a crutch for a weak argument. Data have been thrown out in bucket-loads, but the substance of this argument has not been deployed in quite the same way. We talked a lot about numbers, which is great. We have not talked anywhere near enough about affordability, quality or even if these units are occupied. We know that in many towns and cities foreign investors are coming in and buying up units that local people could live in, ensuring that no one lives there.

When we talk about data collection and how councils have enough to do—that is a fair point—we must also accept that development control teams will be in those buildings, making sure they comply with development control rules. They will be signing those buildings off for occupation. At that point the buildings will come on to the council tax register, and any council worth its salt will then make applications for the new homes bonus. So councils are reporting units anyway, but via a different route. One thing that councils would appreciate is a single point of reporting. Rather than all these Government Departments coming to councils from all over the place asking for individual pieces of data, the Government should say with one voice, "This is what we need to know." Collating the data in one place would helpfully save time and energy.

There is quite a lot of agreement on the principles we have been talking about. The combination being mooted here is of quite small living spaces with a lot of communal areas. A development is being built today in Oldham on that model, where the flats are quite small but there is a gym facility, communal areas and quality space that will attract a niche market of commuters who no doubt work or study in Manchester city centre. There is a place for that, but that is where the local authority has made a conscious decision that that would add value to

the overall mix of accommodation within the town. It is not a free-for-all. Unfortunately, the permitted development route at the moment is a free-for-all for far too many people, without the right checks and balances in place.

I suspect that we will not be able to come much closer than agreeing that permitted development seems to have worked quite well in one or two locations. The evidence, in particular when we hear representations from local government, says that it is fraught with difficulties and removes the local control we know is very important. Perhaps we cannot get any closer than that. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Dr Blackman-Woods: I will not detain the Committee for long, because we have had quite a wide-ranging discussion. The Minister started his comments on amendment 28 by referring to Opposition Members' subbing policy. I want to tell him exactly what our policy is, then perhaps he will explain his. The Opposition recognise the talents of all our Members, including my hon. Friend the Member for Bassetlaw, who is not currently present. We have an incredibly inclusive policy because we want to ensure that everybody participates and is able to use their talents to the full. I am not sure that that is the policy the Minister is employing with regard to Government Members, but I will let him answer for himself.

We will return to permitted development when we discuss new clause 14, but I should say to the Minister quickly that a number of people who gave evidence to the Committee pointed out that permitted development was weakening the planning system. In particular, his own councillor, Councillor Newman from the Local Government Association, pointed out the nonsense of what had happened in Croydon where they had to get an article 4 direction. Although we are not going to vote against the clause, permitted development is not working as well in practice as the Minister suggests, for all the reasons given by my hon. Friend the Member for Oldham West and Royton. I hope the Minister will consider whether the register is really necessary. If he got rid of all the permitted development, it would be unnecessary.

Gavin Barwell: I will keep my remarks brief because I think I already covered clause stand part in my earlier comments on the amendments. To rehearse those arguments, if we got rid of permitted development rights, we would be giving up the thousands of homes—we will find out exactly how many—that the policy has contributed in the nine quarters since it came into place. I repeat the point that I made earlier: if Opposition Members share our view that there is a desperate need to get this country building more homes, it seems strange to oppose a policy that is making a significant contribution to that aim. I commend the clause to the Committee.

Question put and agreed to.

Clause 8 accordingly ordered to stand part of the Bill.

Clause 9

POWER TO TAKE TEMPORARY POSSESSION OF LAND

Dr Blackman-Woods: I beg to move amendment 30, in clause 9, page 8, line 23, at end insert—

"(2A) The power of temporary possession of leasehold interests is not available if an interest would terminate within one year of the date on which the authority intends to hand back possession to the occupier."

This amendment would establish a limitation on the temporary possession of leasehold interests.

Having been at the dizzy heights of permitted development, we turn to the really exciting bit of the Bill—the changes that the Government wish to make to the compulsory purchase order system. This is where we get particularly excited about the Government's reading of the Lyons report, which recommended a major look at this country's CPO system, with the particular intention of simplifying it and making it much easier for local government to operate.

Several of the people who gave evidence to the Committee seemed to suggest that the proposed changes to the compulsory purchase system were okay as far as they went, but that the Government could have used the opportunity provided by the Bill to do something much more substantial. However, people did express some concern about how the Government were taking simplification and rationalisation forward with regard to the power to take temporary possession in clause 9. Amendments 30 and 31 relate to temporary compulsory purchase, to which we do not object per se, but nevertheless we wonder whether, in pursuing the changes, the Minister should put in place further safeguards.

Some general concerns were expressed in the evidence received by the Committee about the interaction between temporary and permanent possessions. Witnesses just did not think that that had been suitably clarified. Richard Asher of the Royal Institute of Chartered Surveyors told us:

"There is one area of difficulty: the danger that authorities may use powers to acquire land compulsorily when it is only required on a temporary basis. That interferes with long-term prospects for development by landowners, whose development plans are quite often disrupted by compulsory purchase on a temporary basis. That needs to be considered to ensure that authorities only acquire land on a temporary basis when it is required temporarily."—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 61-62, Q113.]

Similarly, Colin Cottage from the Compulsory Purchase Association said:

"There is still the possibility of taking both temporary and permanent possession, and that will create uncertainty for people affected by it, because, even if there is a period of temporary possession, it may be converted at a future date to permanent possession and they will have no control over that."—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 66, Q117.]

Amendment 30 is a probing amendment that seeks to gain some clarification on whether the Minister thinks there should be a limitation on the temporary possession of leasehold interests so that there may be a greater degree of certainty in this area for the landowner, for the local authority and, indeed, for any possible future developer.

Some specific problems seemed to emerge on the temporary possession of leasehold land. The CPA pointed to those concerns in its written evidence:

"We are concerned that there should be limitations on the power to acquire short leasehold or other subordinate interests because the Bill does not deal with the situation where a leaseholder remains responsible to the landlord for the use, repair and payment of rent under the lease but is not in control of the property whilst it is under temporary use. The area is complex

[Dr Blackman-Woods]

and clarity of the relative parties' obligations to each other must be clarified in a leasehold situation where temporary possession powers are exercised."

That was reiterated by Colin Cottage of the CPA when he said that,

"there are practical issues with temporary possession that need to be dealt with, including the interrelationships between different tenures in land, how to deal with an occupier of land when that land is taken temporarily, and what to do if buildings have to be demolished and so on. Those issues can be overcome, but they need to be looked at carefully if the Bill is to come into law and to not cause, rather than solve, problems."—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 62, Q113.]

Those problems might be experienced by either the landowners or the local authority.

I hope the Minister will be able to answer some of the questions about the nature of temporary possessions, particularly with regard to leaseholds, and whether there might be some limitation on the timeframe. More generally, it is clear from some of the evidence we received that CPO legislation needs serious reform. The witness from the RICS said:

"I believe, and the Royal Institution of Chartered Surveyors has always believed, that codification of the whole of the CPO rules, which go back to 1845 and are highly complex, would be a sensible way forward. I think the simplification of the rules for CPO would be a major step forward…I think the complexity often deters people—particularly local authorities, in my experience—from using CPO powers. It also results in a number of CPOs being refused or rejected by the courts because of the complexity of the rules that surround them."—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 63, Q114.]

4.45 pm

That was echoed, again, by Colin Cottage of the CPA in answer to my question about whether the Bill was likely to result in more land for development. Given that the Government are meant to be coming up with ways to get more housing delivered, and assuming that the reform of CPOs might be one of the measures that the Government are trying to use to get more land into the development system, Colin Cottage's answer to my question would probably have been of some concern to the Minister. When I asked whether the changes in the Bill were likely to bring forward more land for development through the CPO process, he said:

"My short answer to your question is no",

continuing,

"possibly they will not. There are more underlying problems with the system. It is lengthy. It is uncertain for all parties—both for acquiring authorities and for the people affected by it…The existing system is not helpful for reaching quick solutions. In fact, in many ways it encourages people to be fighting with each other from the outset. Ultimately, that increases the uncertainty, conflict and cost."—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 63-64, Q114.]

In Labour's Lyons review, which the Government are already familiar with, we outlined the need to update legislation on compulsory purchase orders to make them a more effective tool to drive regeneration and to unlock planned development. I will not go through the Lyons review for this particular amendment—I will come to it later in our deliberations—but, for the purposes of what the Government are seeking to achieve through the clause, they might have wanted to look at ways of simply speeding up and clarifying the CPO system for local authorities and others.

Temporary possession of land might be helpful, very much at the margins, but what we seemed to hear from people giving evidence to the Committee was that it was just as likely to cause other problems or simply not be clear enough to enable local authorities and the people whose land was affected to have assurances about the nature of the temporary possession. Furthermore, they thought that the lack of particular timeframes could bring additional problems and leave, in particular, people who have liabilities for a site in a very unfortunate situation. They might have liabilities based on the current use of the site, but its temporary acquisition might mean that they still had to discharge some of those liabilities without being in control of the property.

The purpose of amendment 30, therefore, is to tease out from the Minister whether the Government thought about such a set of circumstances and what they wish to do about them.

Gavin Barwell: We have now moved on to the CPO section of the Bill. A number of clauses relate to those provisions. Let me address a couple of the points that the hon. Lady made right at the outset.

The hon. Lady is right to say that several witnesses said that they would be interested to see a more fundamental reform of the CPO system, and I am certainly interested in talking to people about that, but I do not think that that should preclude some sensible reforms to simplify the system now, to make it clearer, fairer and faster. We can then have a longer-term debate about a more radical reform.

On whether more homes will be delivered, I do not think that anyone claims this particular reform to be a game changer. However, I believe that simplifying the system will make it easier for local authorities to make use of those powers. I speak from some experience because my own local authority recently embarked on a significant compulsory purchase order in relation to the redevelopment of the Whitgift Centre in the centre of Croydon.

Amendment 30 would amend clause 9, "Power to take temporary possession of land", so it might help if I briefly explain the purpose of the clause. All acquiring authorities may need to enter and use land for a temporary period to help to deliver development for which they have made a compulsory purchase order; for example, they may require land to store construction materials for the scheme or to provide access to the construction site. At present, however, only certain acquiring authorities—such as those authorised under special Acts for very large schemes, such as the Crossrail Act 2008—have the compulsory power to occupy and use land on a temporary basis. Crucially, compulsory purchase orders cannot authorise temporary possession.

Clauses 9 to 21 will give all acquiring authorities the power to take temporary possession of land needed to deliver their scheme. At the same time, they will ensure that those whose land is taken are fairly compensated, and that appropriate safeguards are in place to protect their interests. The hon. Member for City of Durham quoted a witness who said that we needed to ensure that when land is required only temporarily, only a temporary occupation is taken. That is precisely why the clauses are in the Bill: to ensure that all acquiring authorities can take both permanent and temporary possession. Clause 9 sets out who may exercise the new power; essentially, everyone with the power to acquire land,

either by compulsion or agreement, will have the power to take temporary possession of land for purposes associated with the development scheme for which they need compulsory acquisition.

I agree with the hon. Member for City of Durham that we need to ensure that the interests of leaseholders are adequately protected in introducing this power. However, I believe that amendment 30 is unnecessary, because we have already built in a safeguard that will deliver the outcome she is looking for but in a more flexible way. Her amendment would restrict the temporary possession power so that it could never be used if a leasehold interest had less than a year to run after the land was handed back. It is completely understandable why she wishes to do that, but her amendment would mean—this is quite complicated, so I hope Members will bear with me—that if the land was essential to the delivery of the scheme, the acquiring authority would have to seek to acquire the leasehold interest by compulsion. At the same time, given that there would still be a need to occupy the land on a temporary basis to implement the scheme, the authority would have to seek temporary possession of the freehold interest and any other longer leasehold interests in the same land. That would be contrary to the established principle that the authorising instrument deals with the need for the land, while the interests in the land are dealt with afterwards. It would make the authorising instrument more complicated, because it would have to deal with different interests in different ways for that plot of land. It would also restrict the leaseholder's options, because they might be content for temporary possession to go ahead.

There is a problem and the hon. Lady has rightly put her finger on it, but we have tried to build in a safeguard that I believe will achieve the outcome she seeks in a different way. That safeguard is clause 12(3), which allows leaseholders who are not content with the situation to

"give the acquiring authority a counter-notice which provides that the authority may not take temporary possession of the land."

On receipt of that counter-notice, if the land is essential to the delivery of the scheme, the acquiring authority will have to look into taking it permanently. That is a neater solution. because it will give leaseholders the flexibility to decide whether they are content with what the acquiring authority sought to do or whether they have concerns and want to serve a counter-notice. I therefore ask the hon. Lady to withdraw her amendment.

Before I take my seat, it might help if I briefly respond on a couple of wider issues that the hon. Lady raised in relation to clause 9 and to temporary possession in general. She is right to say that some witnesses questioned whether being able to take both temporary and compulsory acquisition over the same piece of land would work. The Government believe that there may be circumstances in which that is required. It would be for an acquiring authority to make the case to the confirming authority that it was necessary. For example, temporary possession of a large field might be needed for a working compound for construction of a pipeline, but compulsory acquisition of a small part of the field might be required on a permanent basis to install and then maintain the pipeline. Actually, there are some good historical examples. Compulsory purchase and temporary possession powers are often sought in relation to the same land in development consent orders. To give two examples, the docklands light railway extension and the Nottingham tram system both involved a mixture of those powers.

There was one other point that the hon. Lady referred to that I probably need to respond to. Her amendment deals with the issue of a minimum time—what happens to a leaseholder when they reacquire their land and there is less than a year left on the lease—but she was also probing about whether there should be a maximum period of time for which somebody could take temporary possession of land.

No maximum period is set in the legislation, because circumstances can vary a great deal from case to case; however, acquiring authorities must specify the total period of time for which they need temporary possession at the outset of the authorising instrument. The confirming authority will then consider whether the acquiring authority's justification for the length of temporary possession is strong enough before deciding whether to authorise it. There are some safeguards built in. Both freeholders and leaseholders can serve a counter-notice on an acquiring authority, requiring them to limit the temporary possession period to 12 months when the land is part of a dwelling, or to six years in any other situation. Again, leaseholders have the ability to serve a counter-notice provided that the acquiring authority cannot take temporary possession of the land at all, in which case the acquiring authority would have to look at taking permanent possession.

This is a complicated area, but I hope I have been clear—maybe not.

Jim McMahon: I am not usually a suspicious person, but during that contribution there was a voice at the back of my head saying, "Is this all about fracking?" Is this about the Government's newfound commitment to fracking and about trying to remove landowners' rights, trying to create temporary compounds and trying to create opportunities to drill without going through the full and proper procedure? That may not be for today, but I would certainly appreciate the position on that in writing.

Gavin Barwell: I am happy to write to the hon. Gentleman and provide him with a full response to that question. I can reassure him that these provisions do not come from that particular policy area. It was before my time—I am looking for inspiration—but I think I am right in saying that there were compulsory purchase provisions in the Housing and Planning Act 2016. It was in the discussion and debate around those provisions that these issues got raised, and that is why the Government are seeking to clarify the law in that regard. I will happily write to the hon. Gentleman and hope that I have now addressed the points that the hon. Lady raised, so I ask her to withdraw the amendment and hope the clause can stand part of the Bill.

Dr Blackman-Woods: I listened carefully to what the Minister had to say. I did emphasise that this is very much a probing amendment, testing whether the Minister and his Department had thought through some of the possible complexities that could arise with a temporary possession and a more permanent possession going through at the same time, and also some of the difficulties that might arise for landowners when a temporary possession is granted but they still have liabilities.

[Dr Blackman-Woods]

In the main, the Minister's comments were quite reassuring. I am still not sure whether there is a need to have an overall time limit on temporary possession, to make sure that local authorities do not use it as a way of letting things run forward without having to put a full application for a CPO in place. I want to think about that; I will do so and will consult the Compulsory Purchase Association. For the moment, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 9 ordered to stand part of the Bill.

Clause 10

PROCEDURE FOR AUTHORISING TEMPORARY POSSESSION ETC

Question proposed, That the clause stand part of the Bill.

5 pm

Gavin Barwell: It is clearly important that where an acquiring authority wishes to exercise the temporary possession power, it is subject to proper scrutiny, and that those with an interest in the land that will be affected have the opportunity to put forward their views. The clause achieves that by requiring the case for temporary possession to be set out in the same type of authorising instrument as the associated compulsory purchase—for example, in a compulsory purchase order or in a development consent order. It will then be subject to the same procedures for authorising and challenging it as the compulsory acquisition. That means that if, for example, a planning inspector holds a public inquiry to consider the CPO before it is decided whether the order should be confirmed, the public inquiry will also need to consider whether the temporary possession power should be authorised.

The clause sets out which information must be included in the authorising instrument—for example, the purpose for which the acquiring authority needs temporary possession of the land and, as I have previously mentioned, the total period of time for which temporary possession is required.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

NOTICE REQUIREMENTS

Question proposed, That the clause stand part of the Bill.

Gavin Barwell: The clause requires acquiring authorities to give at least three months' notice of their intention to enter and take temporary possession of the land. It will ensure that those affected have sufficient time to put in place any necessary arrangements—for example, to move livestock. The measure is a minimum requirement, and acquiring authorities will be able to give more notice where they consider it appropriate. The notice must specify how long the temporary possession will last, and a separate notice must be served for each period of temporary possession.

Question put and agreed to.

Clause 11 accordingly ordered to stand part of the Bill.

Ordered, That further consideration be now adjourned. *—(Jackie Doyle-Price.)*

5.2 pm

Adjourned till Thursday 27 October at half-past Eleven o'clock.