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Public Bill Committee

NEIGHBOURHOOD PLANNING BILL

Seventh Sitting

Thursday 27 October 2016

(Morning)

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not later than

Monday 31 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

Thursday 27 October 2016

(Morning)

[Mr Peter Bone *in the Chair*]

Neighbourhood Planning Bill

Clause 12

Counter-notice

11.30 am

Dr Roberta Blackman-Woods (City of Durham) (Lab): I beg to move amendment 31, in clause 12, page 10, line 10, leave out "6" and insert "3"

This amendment would reduce the length of time that an acquiring authority can take temporary possession of land.

It is a pleasure to serve under your chairmanship, Mr Bone. Amendment 31 would reduce the length of time that an acquiring authority can take temporary possession of land for. It is very similar to amendment 30, in that it aims to provide a degree more certainty for owners about what temporary possession means. At present, the Bill states that the amount of time that an owner—defined as having either a freehold or leasehold interest in the land—can limit temporary possession to by means of a counter-notice is 12 months where the land is or is part of a dwelling and six years in any other case, or else the acquiring authority must take further action.

The amendment would allow owners to limit the amount of time that land can be temporarily possessed, where it is not a dwelling, to three rather than six years. Our position reflects that of the Compulsory Purchase Association, which said in evidence,

"we feel that, for freehold owners, six years is too long. Three years as a maximum is better. Notwithstanding that, the ability to serve counter-notices is correct and encouraging to development."

I want to stress that point to the Minister. It is not the counter-notice period as such that we have a problem with, but the length of it. The CPA went on:

"Six years is quite a long period. If a business is dispossessed of its property for six years, that is effectively almost as good as a permanent dispossession".—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 66, Q117.]

If a business is away from its premises for six years, it will essentially have to completely restart the business somewhere else. One would assume that it will feel much more like a permanent relocation if it is away in excess of five years.

The IPD UK lease events review 2015, which was sponsored by Strutt and Parker and the British Property Federation, pointed to short-term leases of five years or less being particularly desirable for smaller commercial leases, stating:

"Flexibility remains key for many tenants, despite the lengthening of commercial leases, with 73% of total leases signed so far in 2015 for a term of between one and five years."

Allowing counter-notices to be served that limit temporary possession to three years, rather than six, relates more directly to the reality of a lease's lifespan, particularly for a small business. The whole point here is that if a lot of leases are five years in length and businesses are required to move for six years, it is very likely that a substantial number of those businesses will have lost the lease on the original premises and had to take out a lease on wherever they relocate to, for five years or even longer.

We are trying to find out why the length of time is being set at six years. What research did the Government do to come up with that period? Have they any plans to meet the CPA or representatives of small businesses who may be particularly affected by the measures in clause 12? Do they have any plans to review how the clause is operating in practice, and particularly whether it is producing problems for small businesses?

The Minister will probably say that only a small number of businesses would be affected by the relevant type of compulsory purchase, that the balance is right and that the provision should therefore remain. I am sure he is right that the clause will not be used in many instances. Nevertheless it is a critical matter for the businesses that are affected. We would not want the clause to result in businesses moving from a high street or an important position in the community and not being able to come back, so that there would be blight further down the line. I hope that the Minister has got the drift of our argument.

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

The amendment is entirely legitimate as a way of probing why the Government have arrived at the figure in question. It may help if I explain the purpose of clause 12 before I discuss the amendment, because some of the provisions will, I think, help to reassure members of the Committee.

The Government recognise that in certain circumstances taking temporary possession of land may be at least as disruptive as permanent acquisition. Clause 12 therefore provides an important additional safeguard to protect the interests of those whose land is subject to temporary possession. I say "additional" because any proposal for temporary possession of land must be authorised in the same way as compulsory purchase.

Clause 12(2) allows the owner of a freehold, or a leaseholder with the right to occupation, to serve a counter-notice requiring the authority to limit the period of possession to 12 months for a dwelling or six years for other land. That ability to serve a counter-notice on implementation of temporary possession is a further check and balance, in addition to scrutiny during the confirmation process.

Under clause 12(3) leaseholders—who are, I think, the people in whom the hon. Member for City of Durham was particularly interested—will also have the option to serve a counter-notice providing that the acquiring authority may not take temporary possession of their interest in the land at all. In those circumstances the acquiring authority must either do without the land or acquire the leasehold interest permanently.

Where a counter-notice is served under clause 12(2) the acquiring authority will have to decide whether the limited possession period sought by the landowner is workable for the acquiring authority at that time, or whether permanent possession is necessary. Alternatively,

the acquiring authority may conclude that it does not need to take temporary possession of the land in question; for example, it might alter its construction plans.

Where the acquiring authority opts for acquisition of the land, subsection (9) provides for the standard material detriment provisions to apply. That means that if only part of a person's land is acquired, but the retained land would be less useful or valuable as a result of part of the land being acquired, a further counter-notice may be served requiring the authority to purchase all the land.

I hope that the Committee can see that there are a number of safeguards, including time limits that can be placed on periods of temporary possession of a leasehold interest; I think that that is the issue about which the Opposition are particularly concerned. It is possible to say, in that case, "If it is going to be for that length of time we do not want temporary possession at all, and you either need to take permanent possession or do nothing at all." Also, if possession is taken of part of a site and that will have an impact on the rest of the site, there are provisions to require the whole site to be taken.

The amendment, as the hon. Lady explained, would limit the period of temporary possession of land not occupied by dwellings to three years, rather than the six specified in the Bill. I entirely appreciate why she tabled the amendment; it was, I think, out of a determination, which I share, to ensure that those whose land is subject to temporary possession are properly protected.

The limit of six years is designed to give those affected greater certainty about the total period that non-dwelling land can be subject to temporary possession. Restricting the temporary possession period to three years would limit the usefulness of this new power and may drive acquiring authorities down the route of compulsory purchase in certain circumstances where that would be unnecessary. There are some schemes—one example not too far from us here is the Thames Tideway tunnel—where the temporary possession of land has been required for longer periods than the three years in the amendment.

There needs to be a balance between giving acquiring authorities the power they need to deliver their schemes and ensuring that the interests of those whose land is taken on a temporary basis are protected. The Government believe that six years strikes the right balance. In many cases the temporary possession will be for far less than six years. In the case of the Thames Tideway tunnel, the maximum length of temporary possession is eight years, so the acquiring authority would have to decide to permanently acquire the land.

As the Bill continues its progress through Parliament, I am happy to consider any evidence that Opposition Members or interested parties are able to provide that suggests the six-year figure does not achieve the correct balance. I can also reassure the hon. Member for City of Durham that even if the legislation is passed in its current form, the Government will keep the time limit under review as the new power begins to take effect, because the regulation-making power in clause 19 would allow us to make changes to the time limit without having to come back to the House with further primary legislation.

I hope I have given significant reassurance. On that basis, I ask the hon. Lady to withdraw her amendment.

The Chair: The Minister has kindly set out what clause 12 is all about, so there will be no separate stand part debate. If anyone wants to speak on stand part, now is the time to do it.

Dr Blackman-Woods: I thank the Minister for his largely helpful response. It is useful to point out that a counter-notice can try to remove possession being taken at all. It is quite a drastic measure to ask local businesses to enter into a lengthy and difficult process. However, it is worth stressing that that option is open to them, as is trying to suggest that possession should be for only a part of the site. Again, that could be helpful.

I listened carefully to what the Minister said about reducing the total period of temporary possession to three years. I am very pleased that the Minister said he would keep that under review. He did not address the fact that a lot of leases for businesses are five years, and that requiring them to move for six years is effectively a permanent removal to a new location for them. However, I heard what the Minister said about keeping the matter under review and seeking evidence from people who have a specific interest in this area. It was a very helpful response. On that basis, I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 12 ordered to stand part of the Bill.

Clause 13

Refusal to give up possession

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

The Chair: With this it will be convenient to discuss clauses 14 to 21 stand part.

Gavin Barwell: The clauses deal with compensation and other matters related to the temporary possession power. Clause 13 is relatively straightforward. It ensures that where someone refuses to give up possession of the land, the acquiring authority can take steps to gain possession by ensuring that the existing enforcement provisions for compulsory acquisition cases, which enable an acquiring authority to use a sheriff or officer of the court to enforce possession by a warrant, also apply to temporary possession cases.

Clauses 14 to 16 set out how the compensation provisions will work to ensure that those whose land is subject to temporary possession are fairly compensated for the disruption caused. Clause 14 provides that the claimants will be entitled to compensation for any loss or injury that they sustain as a result of the temporary possession. The compensation payable will reflect the rental value of the leasehold interest in the land. Where the claimant is operating a trade or business on the land, they will be entitled to compensation for disturbance of that trade or business.

11.45 am

Subsection (7) provides that the start of the statutory six-year time limit for submitting a compensation claim runs from the end of the temporary possession period, rather than the start. That is a safeguard to ensure that

claimants do not run out of time to submit a claim for compensation if the temporary possession is for a lengthy period. Claimants will be entitled to interest on any compensation outstanding after the end of the temporary possession period. As with compulsory purchase more generally, if any disputes about compensation arise, they will be dealt with by the Upper Tribunal.

Clause 15 ensures that those affected are entitled to request and received advance payments of compensation. Provisions are modelled on those that are already in place for compulsory purchase, but I will briefly summarise the key elements. After receiving a notice of intended entry under clause 11, an owner or occupier may submit a written request for an advance payment. The request should explain the basis for the claim and contain sufficient information for the acquiring authority to make an estimate. Further information may be requested, if necessary. The advance payment will be 90% of the compensation amount agreed by the acquiring authority and the claimant, or 90% of the authority's estimate if the amount is not agreed by both parties. It must be made on the day of entry to the land or, if later, two months from the date on which the request was received or any additional information was provided.

Clause 15(7) to (9) make provision for further payments by the acquiring authority or a repayment by the claimant. That is where the initial estimate is either subsequently found to have been too low, or where it is later found when the compensation is agreed that the acquiring authority's estimate was too high so the claimant has been overpaid.

Clause 16 provides that interest is payable on any outstanding amounts of advance payments of compensation that are due after the due date. Subsection (3) provides that if the advance payment made is subsequently found to be in excess of the entitlement, the person must repay any interest paid. Under clause 15(8), the person must also repay any excess compensation paid in advance. I hope those arrangements will encourage acquiring authorities to put in place effective procedures to deal with requests for advance payments.

Clause 17 confirms that an acquiring authority may only use the land for the purposes for which the temporary possession was authorised. Subsection (2) makes it clear that that can include the removal or erection of buildings or other works, and the removal of vegetation, to the extent that the acquiring authority would have been able to do, had it acquired all the interest in the land instead of just taking temporary possession.

Clause 18 makes some consequential amendments to the Town and Country Planning Act 1990. The planning system enables owner-occupiers of properties or businesses that are affected by statutory blight from proposed development to require the acquiring authority to purchase their property on compulsory purchase terms. There are currently about 20 different forms of statutory blight, one of which is inclusion in a compulsory purchase order. Clause 18 adds land subject to temporary possession to the categories of blighted land. It also ensure that the acquiring authority has the right to enter and survey land in connection with taking temporary possession of it.

Clauses 19 to 21 set out the broad framework within which the temporary possession power will work, and they establish protections for those whose land may be affected. However, there may be cases where there is a need to make different provision in different circumstances. For example, it may be necessary to limit what the land may be used for during the temporary possession in certain cases. Clause 19 therefore gives the Secretary of State the power to make regulations as to the authorisation and exercise of the temporary possession power where that is necessary.

Dr Blackman-Woods: How will the Secretary of State know that he has to give a direction, in a particular case, about what temporary possession can be used for?

Gavin Barwell: I imagine—although I will happily write to the hon. Lady if inspiration arises subsequently suggesting that I have got this wrong—that it would be a situation in which a dispute had arisen about the use that the land was put to and where there was a question of whether that would have an effect on the long-term interests of someone on the land. The casework would end up on the Secretary of State's desk and give him the power to make a ruling to that effect. If there are other points that I have not mentioned, I will write to the hon. Lady and members of the Committee to clarify.

Clause 20 simply provides meanings for some of the words used in the earlier temporary possession clauses. Finally, clause 21 provides that the temporary possession power can be exercised in relation to Crown land, subject to the acquiring authority obtaining the consent of the appropriate authority.

Jim McMahon (Oldham West and Royton) (Lab): It is a pleasure to serve under your chairmanship, Mr Bone. I repeat my declaration of interest as a member of Oldham Council, as on the Register of Members' Financial Interests.

I am asking for clarity, because the measure states that compensation will be made for the period of occupation or possession of the land, and that subsequent compensatory payments will be made for any loss or injury suffered. In one possible scenario, however, if farmland was taken possession of, unforeseen costs might be incurred. For example, if the planting season occurred before occupation, a poor harvest might be the result of occupation, so how would the compensation payment work in such circumstances?

Gavin Barwell: Again, it is better that I write to the hon. Gentleman, rather than giving an answer on the spot. I guess he is asking about when some detriment has been done to the long-term interest in the land by the period of temporary occupation and how that is catered for.

Jim McMahon: If that is discovered after occupation.

Gavin Barwell: Exactly; if it is discovered afterwards. I will write to the hon. Gentleman to answer his point, rather than speculating now.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Clauses 14 to 21 ordered to stand part of the Bill.

Clause 22

NO-SCHEME PRINCIPLE

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

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

Clauses 23 to 30 stand part.

New clause 13—*Review of compulsory purchase—*

(1) Before exercising his powers under section 35(1) the Secretary of State must carry out a review of the entire compulsory purchase order process.

This new clause would require the Secretary of State to review the entire compulsory purchase order process.

Gavin Barwell: I will now run through the remaining compulsory purchase measures in the Bill. Clause 22 is the key measure of all the CPO measures in the Bill. It wipes the slate clean of more than 100 years of sometimes conflicting statute and case law about how compensation should be assessed, and it establishes a clear, new statutory framework for doing so.

The core principle of compulsory purchase compensation, which is not altered by the Bill, is that the land should be acquired at market value in the absence of the scheme underlying the compulsory purchase. Any increase or decrease in land values arising from the scheme is therefore disregarded for the purposes of assessing compensation.

The problem is that since the "no-scheme world" principle was first established, it has been interpreted in a number of complex and sometimes contradictory ways. That lack of clarity can make negotiations over the level of compensation difficult, resulting in unnecessary delays. The clause will therefore clarify the position by creating a statutory no-scheme principle and setting out a series of clear rules to establish the methodology of valuation in the no-scheme world.

The clause will also extend the definition of the scheme to include relevant transport projects where they have made the regeneration or redevelopment scheme that is the subject of the compulsory purchase possible. I will say more about that later. The Committee will be delighted to hear that I will not go through the clause line by line, but focus on a few key points.

Subsection (3) will replace sections 6 to 9 of the Land Compensation Act 1961, which set out how the scheme is to be disregarded when assessing compensation. Proposed section 6A in the Land Compensation Act will maintain the fundamental principle that any increases or decreases in value caused by the scheme, or the prospect of the scheme, should be disregarded, and lists the assumptions to be made. If there is a dispute about compensation and the parties have to go to the Upper Tribunal to resolve it, proposed section 6D clarifies how to identify the scheme that must be disregarded.

The default position is set out in proposed section 6D(1): that the scheme to be disregarded means the scheme of development underlying the compulsory acquisition—usually the current compulsory purchase order. If an acquiring authority wants to assert to the Tribunal that a scheme to be disregarded covers a larger area than the underlying scheme of development, it can do so only if that was identified at the outset in the authorising instrument or associated documents, when the acquiring authority started the compulsory purchase process. I hope that is clear.

In proposed section 6D(2) we have replicated the current special provisions for new towns and urban development areas. This special status means that all development within these designated areas forms part of the scheme to be disregarded, so the value of later acquisitions within a new town area will not be influenced by earlier developments within that area. We have extended this special provision to mayoral development areas as well.

We have also made special provision where regeneration or redevelopment schemes have been made possible only by relevant transport projects. I said I would say a few more words about this. New transport projects will often raise land values around nodes or hubs—HS2 is a good example. Where that makes regeneration or redevelopment attractive, but the private sector is unable to bring a scheme forward, public authorities might have to step in by using their compulsory purchase powers to help bring forward the regeneration.

In those circumstances, when assessing the compensation that people might receive if their property is acquired through compulsion by a public authority, the regeneration or redevelopment scheme will be able to include the relevant transport projects as part of the scheme to be disregarded in the no-scheme world. This is a complicated area of law, so let me try to make it as clear as possible. What that means is that the land will be valued without the uplift caused by the public investment in the transport project. This is one of only two bits in the Bill that change the compensation people might get if some of their property is subject to compulsory purchase.

The provision is subject to some very important safeguards to ensure that it is proportionate and fair to all. They are as follows. The prospect of regeneration or redevelopment must have been included in the initial published justification for the relevant transport project. In other words, an acquiring authority could not come along to a piece of land that had been improved by a transport project 20 or 30 years ago, when no mention of this redevelopment happened, and use this legislation to try to drive down the price of compensation. The instrument authorising the compulsory acquisition must have been made or prepared in draft on, or after, the day on which this provision comes into force. The regeneration or redevelopment scheme must be in the vicinity of the relevant transport project. The relevant transport project must be open for use no earlier than five years after this provision comes into force—they must not be existing schemes. Any compulsory purchase for regeneration or redevelopment must be authorised within five years of the relevant transport project first coming into use.

Importantly, if the owner acquired the land after plans for the relevant transport project were announced, but before 8 September 2016—the date on which we announced we were going to do this—the underlying scheme will not be treated as though it included the relevant transport project. In other words, the provision should not be retrospective for people who acquired the land before they might have known the Government were going to change the law in this way.

I recognise that extending the definition of the scheme in this way will mean that some claimants receive less compensation than might otherwise have been the case.

[Gavin Barwell]

However, I hope that the Committee shares my view that it is right that the public, rather than private interests, benefit from public investment into major transport projects. Having increased neighbouring land values by providing new or improved transport links, the public sector should not then have to pay more when acquiring land for subsequent development that was envisaged when that transport project was announced, and would not otherwise have been possible. The provision will ensure that the public purse does not have to pay the landowner land values inflated by previous investment that the public sector has already made.

12 noon

I turn now to clause 23. Part 4 of the Land Compensation Act 1961 provides that in certain circumstances a person whose land has been acquired by compulsion may be entitled to claim additional compensation. That additional compensation entitlement arises if, within 10 years, planning permission is granted for development on the land that causes an increase in its value which was not taken into account in the original assessment of compensation.

Part 4 therefore introduces an element of uncertainty and unknown risk about compensation liability for the acquiring authority, leading inevitably to increased costs, which are often dealt with by paying insurance premiums. In the Government's view it also provides an opportunity for an unearned windfall for claimants. Compensation under the ordinary rules already reflects the full market of the land at the valuation date, with all its present and future potential, including any hope value for future development. Under part 4 a claimant is treated as though they have retained their investment and interest in the acquired land and so can benefit from any increase in value generated by subsequent planning permission. No such expectation would arise on any ordinary sale in the private market. Therefore, although it is little used, I believe that for the reasons I have set out the provision is unfair. Its repeal will reduce the risk and uncertainty for acquiring authorities, while maintaining the principle of fair compensation for claimants.

Clause 24 introduces a statutory timeframe—there is none at present—for the acquiring authority to serve a confirmation notice on all interested parties, attach a confirmation notice on or near the land, and publish a copy of it in the local press. Although most acquiring authorities are keen to push ahead with their scheme and publish the confirmation notice quickly, for a variety of reasons some delay. Those delays prolong the uncertainty facing those with an interest in the land. Depending on their length, delays can also result in delays to much needed new housing, which is what the Bill is ultimately about.

Clause 25 ensures that the entitlement to compensation for disturbance of a business operating from a property that is acquired by compulsion is fair to all tenants and licensees. This is an area where we are changing the law to make compensation more generous. At present there is an anomaly that means that licensees who have no interest in the land that is being taken are entitled to more generous compensation for the disturbance of their business than those with a minor or unprotected tenancy with an interest in the property. That is because where property occupied by a licensee is acquired, the law on disturbance compensation allows account to be taken of the period for which the land they occupied might reasonably have been expected to be available for the purpose of their trade or business, and of the availability of other land suitable to the purpose.

However, for those with a minor or unprotected tenancy with a break clause or a short unexpired term, case law has held that for the relevant purposes it must be assumed that the landlord would terminate their interest at the earliest opportunity, whether or not that would actually have happened in reality. Clause 25 removes that anomaly and brings the compensation entitlement for businesses with minor or unprotected tenancies into line with the more generous compensation payable to licensees.

Clause 26 enables either the Greater London Authority or Transport for London, or both, to acquire all the land needed for a joint transport and regeneration or housing scheme on behalf of the other. My hon. Friend the Member for North West Hampshire may be aware of the problem that exists. At the present time, to bring forward a comprehensive redevelopment scheme in London, two compulsory purchase orders are needed—one promoted by the Greater London Authority for the regeneration or housing elements; and the other promoted by Transport for London for the transport scheme. That clearly makes no sense at all. It adds complexity and delay to the process and causes confusion among those affected. Clause 26 will remove the artificial division and allow the Greater London Authority and Transport for London to use their existing powers more effectively by enabling them to promote joint compulsory purchase orders, or allowing one to acquire land on behalf of the other. In so doing, it will speed up the process and make it clearer for everyone.

Finally, clauses 27 to 30 contain amendments to a small number of provisions on compulsory purchase in the Housing and Planning Act 2016, to ensure that the technical detail operates as intended. I hope that I have given a useful description of what the remaining clauses do.

Dr Blackman-Woods: I thank the Minister for his helpful run-through of the CPO clauses in the Bill. I have a couple of specific questions about clause 22, but I want to say at the outset that those are probing questions because we agree with the overall thrust of the clause. I think that the Minister has taken some tentative steps down the road of socialism in protecting the public interest in the way that might happen under the clause. We absolutely agree with the broad intention of the clause. It is right that it applies to new towns and mayoral developments, and to an extent to transport, to try to facilitate, in particular, the larger scale development that is very much needed. Nevertheless, there are a few questions about how compensation will be decided under proposed section 6D(2) to (4), which is what my questions specifically relate to. At the moment it does not look as though any claims under the proposed section can be referred to the Upper Tribunal. If that is not the correct interpretation, perhaps the Minister will clarify that.

We know that the no-scheme principle is central to a fair assessment of compensation and that the scope of the disregarded scheme must be appropriate so that

proper compensation is paid. The Government have included proposed section 6D(5) under clause 22 to safeguard the public purse in circumstances where it is appropriate to disregard a wider scheme. Where the appropriateness of doing so is challenged, the Upper Tribunal is empowered to determine the matter. Can the Minister explain what safeguards exist where a scheme is extended instead under proposed section 6D(2) to (4), where the recourse to the Upper Tribunal does not exist and all qualifying schemes, regardless of merit or circumstances, will be extended as a matter of law? I am sure that he has sensible reasons for including them but, to ensure that there is confidence out there in the development sector, we might need to hear a little more about why that is the case—if indeed it is the case.

Does the Minister agree that, as desirable as it is to recover the benefits of public investment, such recovery should be made from all those who benefit and should not discriminate against those who are already bearing the impact of losing their homes or businesses to make way for the scheme? The extension of the scope of the scheme in proposed section 6D(2) to (4) without any appeal or consideration of the facts of a case means that there could be injustice to homeowners and small businesses as well as investors and developers that own land affected by such schemes. It goes beyond ensuring fair compensation, which is assured by proposed section 6D(5).

My point is that the Government must avoid poorly targeted policies to recover the benefit of public investment and must introduce separately a properly considered mechanism that might build on existing schemes such as the tax incremental funding and community infrastructure levy schemes, which properly focus the recovery of value from past and future public investment.

Those are my questions for the Minister. As I have said, we agree very much with the basic provisions of clause 22, but there is perhaps a need to put something else into the public record about why they are being introduced in the way they are. Perhaps he should look at the limitations for appeal under proposed section 6D(2) to (4). Does he think anything more needs to be done, or will the scheme as outlined put in place appropriate safeguards for those who might be concerned about the extension of the wider scheme, in particular, and the extension to transport? Overall, we can see the rationale for the Government wanting to do that.

I move on to new clause 13. We have had a helpful discussion about CPO. We had a rather lengthier discussion about CPO during the passage of what is now the Housing and Planning Act 2016. I also looked at CPO powers under the previous Government's Infrastructure Act 2015. Having recognised that CPO powers and the legislation underpinning them are very complex, we are in danger of the Government going on with the process of simply amending CPO powers and tinkering with the system, making it more complex, I suspect, rather than less. However, there seems to be a view across all parties that we need to review this in its entirety and bring forward a much more consolidated and rationalised piece of legislation that will be much easier for local authorities and developers to get their heads around.

Unfortunately, I do not have with me the Town and Country Planning (General Permitted Development) (England) Order 2015. The last time I asked the Government to introduce a piece of consolidated legislation on permitted development, I did not think I was going to get 167 pages in return, plus an additional 12 pages a couple of months ago, separate from that order, so I have some anxieties in proposing this new clause.

CPO legislation goes back a very long way—I think to 1845, with parts of that legislation still used—and it might be about time to think of consolidating it. We are not the only ones to think so. Colin Cottage from the CPA—which is the Compulsory Purchase Association, not the Commonwealth Parliamentary Association, although that might have an interest in CPO—told the Committee:

> "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. That is really the issue that we have to look to address in order to give ourselves a more streamlined system."—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 64, Q114.]

Richard Asher from the Royal Institute of Chartered Surveyors 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.]

If ever there were an argument for simplifying, rationalising, streamlining and consolidating a bit of legislation, surely it is that the courts, simply because they are finding the legislation too difficult and complex, are throwing out what might be bona fide requests for a CPO.

12.15 pm

I appreciate that the Government have been consulting on CPO reform. The consultation document appears to have been issued before the Committee sat, so I thought we should acknowledge that. We got not only the consultation but the Government's response. That is a bit of good practice that I suggest the Government use elsewhere but, alas, the Government did not consult on whether the whole scheme should be reviewed. They asked about various aspects of the reform, which is a step forward. If the consultation has led to the measures in clause 22, it is a good thing. However, it is time for a fundamental review of not only the primary legislation but the secondary legislation on compulsory purchase. A full-scale rationalisation and consolidation would be an extremely helpful way forward.

We all know—and I think this view is shared across the whole House—that we have to deliver more homes. I hope that the Minister shares our view that those homes have to be delivered in communities. We should be about placemaking and not just building homes. The areas that those homes are in will need to be underpinned by appropriate infrastructure. In this country, we are poor at bringing forward the infrastructure that we need on time. Having a rationalised, much more straightforward CPO system would definitely help us to bring forward the necessary infrastructure in a timelier manner.

Very helpfully, Colin Cottage of the Compulsory Purchase Association pointed to some examples from other places that the CPA feels do compulsory purchase

better than we do in the UK. I do not know whether that is the case, but it might be helpful for the Minister to look into that. Colin Cottage mentioned America, which he said had a more streamlined system where,

"81% of land value compensation assessments are agreed immediately, and another 4% settle after a short period of time. Only the remaining 15% are then contested for any lengthy period of time. That is a much higher strike rate than we have in this country."—[*Official Report, Neighbourhood Planning Public Bill Committee,* 18 October 2016; c. 65, Q116.]

It would be very interesting to hear whether the Minister or his Department have any intention of looking for international examples that might help to bring forward land more clearly through a revised CPO system. Examples of countries that manage to get to an agreement on compensation much more quickly would be helpful.

The British Chambers of Commerce pointed us to the French system. In these Brexit days, we are perhaps not meant to look to France or other European countries for example of good practice. Nevertheless, the BCC said that the French system had an enhanced CPO compensation scheme that enabled particularly large-scale transport projects to be brought forward more quickly. The Minister might like to look at that suggestion. I will leave that argument there. I know that the Minister reads the Lyons report regularly, so he will know that we made a very comprehensive argument in it for reviewing compulsory purchase legislation in this country. I will not repeat that argument here; I have summarised it as succinctly as I can. I look forward to hearing what the Minister has to say.

Gavin Barwell: I will begin by answering some of the hon. Lady's detailed questions and then come on to the principles behind the amendment. I think she had three questions; I was not quite clear on the first, so I will deal with the other two and then see if I understood the first question correctly.

The hon. Lady's third question was about ensuring that everybody benefits from an uplift in land values as a result of Government public investment in the scheme and that there is a way of capturing back some of that uplift. To a degree, she answered her own question: under current policy, CIL is the main mechanism by which we seek to capture some of the uplift when development is given, so that a contribution can be made to necessary improvements within a community area, a new infrastructure or whatever is required. She will be aware that I have on my desk a review by Liz Peace and her team of CIL and issues relating to section 106 contributions. We are considering that review and will respond to it in our White Paper later this year. The hon. Lady's point that it is legitimate for the state to capture some of that uplift is absolutely valid; we need to think about the best mechanism for doing that.

I believe that the hon. Lady's second question was on arguments about the definition of the scheme, what it constituted and whether the upper tribunal had a role. Have I understood her correctly?

Dr Blackman-Woods: It was whether the widening of the scheme under proposed section 6D(2) to (4) of the Land Compensation Act 1961 could be referred to the upper tribunal under proposed section 6D(5).

Gavin Barwell: The answer is a simple yes. Proposed new section 6D(5) states:

"If there is a dispute as to what is to be taken to be the scheme…then, for the purposes of this section, the underlying scheme is to be identified by the Upper Tribunal",

so the answer is a simple yes.

I think the hon. Lady's first question was about the wider role of the upper tribunal in dealing with compensation disputes. She was concerned that there were some other areas that could not go to the upper tribunal. We believe the answer is that they can, but I may not have captured her question correctly. Would she reiterate in which particular cases she was worried that people could not go to the upper tribunal?

Dr Blackman-Woods: It was the schemes referred to in proposed new section 6D(2) to (4), and whether compensation arrangements could be determined under proposed new section 6D(5).

Gavin Barwell: The answer is a definite yes.

If Mr Bone is feeling particularly generous, he might let me answer hon. Members' earlier questions, but he may prefer me to write to them rather than going back to a previous debate.

The Chair: No: if you have suddenly remembered, Minister, go ahead.

Gavin Barwell: Inspiration has arrived. Clause 19 gives the power to make regulations limiting or making particular provision about temporary possession; the hon. Member for City of Durham asked for some guidance about how those powers might be used. The Government's thinking is that it could be about particular types of land, such as open spaces, commons or National Trust land. We might want to give particular thought to classes of land in which the provisions might not apply.

In the agricultural example given by the hon. Member for Oldham West and Royton, the losses would be assessed as a claim for loss or injury under clause 14(2), so the answer is that it is covered. Thank you for allowing me to clarify those two matters, Mr Bone.

I have some sympathy with the points made by the hon. Member for City of Durham. As we touched on in an earlier debate, the evidence we heard showed that there was definitely a strong desire out there for simplification of the CPO rules. We believe that the Bill contributes to that, particularly by clarifying in statute how the no-scheme world principle works, but also by removing the uncertainty that I referred to about people's ability to come back and make subsequent claims for compensation based on subsequent planning applications. There are definitely measures in the Bill that deliver some of the simplification that people want, but the hon. Lady is right that some people who gave us evidence said that maybe we need a fundamental rethink of the whole thing. I certainly do not have a closed mind on that.

The Law Commission has looked at this area of law. To a degree, what the Government did in the Housing and Planning Act 2016 and what they are doing in this Bill reflects the advice of the Law Commission. Compulsory purchase is probably an area on which it is easier to say, "We need a fundamental reform," than to develop consensus on what that fundamental reform should be. I am certainly not opposed to that in principle.

What I would like to do, if the Committee is agreeable, is to implement these reforms, around which there is a good degree of consensus. Let us see what impact they have on speeding up CPOs; hopefully they will make it easier for people to use and undertake them. At that point, we can consider the hon. Lady's suggestion. There is something that I do not like doing, although I accept that I may be in a slightly different position from other members of the Committee. I have become very conscious, in just the three months I have been doing this job, of how easy it is for Parliament to write into legislation, "The Government must review this" and "The Government must review that." A huge amount of civil service time is then taken up with undertaking those reviews.

We keep all our policies under review and based on the evidence all the time. However, something that has been said to me consistently by people across the housing world—large developers, smaller developers, people working in local authority planning departments and housing associations—is that people are looking for consistency of policy. Therefore, my ambition, if possible, is to set out in the White Paper a strategy for how we can get the country building the number of homes that we need, to listen to what people have to say in response to the White Paper and to implement it. I would then like to try—this is an ambitious thing for a politician to say—to have a period of policy stability during which we get on and implement the strategy that we have set out, rather than introducing changes every single year.

I do not want to be unsympathetic to the hon. Lady because her new clause just reflects the fact that some people have said, "Could we look at a more radical thing on CPO?" If, over time, there were a growing consensus about how that might be done, I would not close my ears to it. However, I do not want to write into this legislation a statutory requirement on the Government to conduct such a review when I am clear that my officials will have a huge piece of work on their hands dealing with the White Paper and the responses to it, and then implementing the strategy. I hope that I have explained my position without being in any way unsympathetic to the principle of the hon. Lady's point.

The Chair: It might be helpful to right hon. and hon. Members to understand a couple of technical things that happened there. First, we are appreciative of the Minister going back to earlier matters. It is my belief that it is better to have answers given on the record, rather than by letter.

The second point is that new clause 13 has been spoken to in this group because it is about CPO, but it is not being moved at this stage, so it cannot be withdrawn. It will be up to the shadow Minister whether she wants to move that clause when we reach it later. As nobody else wishes to speak, we can move on.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clauses 23 to 30 ordered to stand part of the Bill.

Clause 31

FINANCIAL PROVISIONS

12.30 pm

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

The Chair: With this it will be convenient to discuss clauses 32 and 33 stand part.

Gavin Barwell: I will try to be brief. Clauses 31 to 33 make standard provision in relation to expenditure incurred, consequential provision that can be made and any regulations that may be passed by virtue of the provisions in the Bill.

Clause 31 provides spending authorisation for any expenditure incurred in consequence of the Bill. That is necessary, for example, in relation to the provisions in part 2, which provide for the circumstances where public authorities may be liable to pay compensation—and, in some cases, interest on that compensation—to persons who have an interest in or a right to occupy land that is compulsorily acquired or subject to temporary possession.

Clause 32 confers a power on the Secretary of State to make such consequential provision as is considered appropriate for the purposes of the Bill. A number of consequential changes are made by the Bill, including those flowing from: the addition of a new procedure for modifying neighbourhood plans; the changes to restrict the imposition of planning conditions; and the amendments to compulsory purchase legislation. Despite aiming for perfection, it is possible that not all such consequential changes have been identified. As such, it is prudent for the Bill to contain a power to deal in secondary legislation with any further necessary amendments that come to light.

Clause 33 makes provision for the parliamentary procedure that applies to any regulations made under any delegated powers set out in the Bill. The majority of delegated powers in the Bill will be subject to the negative procedure, but there are two exceptions. First, any regulations made under clause 19(1) that set out further provision in relation to temporary possession—the hon. Lady asked me about this, and inspiration arrived to answer her—will be subject to the affirmative procedure. That is because the nature of the power to take temporary possession, which interferes with property rights, and the public interest in compulsory powers over land merit a higher level of parliamentary scrutiny.

Secondly, any consequential amendments that amend primary legislation under clause 32(1), which I was just talking about, will also be subject to the affirmative procedure. That is to ensure that any further changes that might be necessary to Acts of Parliament that have previously been subject to the full parliamentary process are appropriately scrutinised. In plain English, if we have missed anything and we need to use clause 32 to deal with that, it would be inappropriate to do that through the negative procedure. Parliament should have the opportunity to properly debate any changes that have been made.

In conclusion, the clauses make standard an essential provision that is necessary to ensure that the measures in the Bill can be commenced.

Question put and agreed to.

Clause 31 accordingly ordered to stand part of the Bill.

Clauses 32 and 33 ordered to stand part of the Bill.

Clause 34

EXTENT

Gavin Barwell: I beg to move amendment 24, in clause 34, page 26, line 38, leave out "subsections (2) and" and insert "subsection".

[Gavin Barwell]

This amendment and amendment 25 provide for the repeal of section 141(5A) of the Local Government, Planning and Land Act 1980 in clause 23(3) to extend to England and Wales only. Although section 141 generally extends to Scotland, subsection (5A) only extends to England and Wales, so its repeal should only extend there.

The Chair: With this it will be convenient to discuss Government amendment 25.

Gavin Barwell: As a demonstration that perfection is not always possible, amendments 24 and 25 are technical amendments to clause 34, which is the standard extent clause of the Bill. In other words, it is the clause that says which parts of the United Kingdom the legislation applies to. They are necessary to correct a drafting error.

As currently drafted, clause 34 provides that clause 23(3), which makes a consequential amendment as part of the repeal of part 4 of the Land Compensation Act 1961, extends to England, Wales and Scotland. That is incorrect, as the measures in the Bill, with the exception of the final provisions, should extend to England and Wales only.

Clause 23(3) is a consequential provision that repeals subsection (5A) of section 141 of the Local Government, Planning and Land Act 1980. That provides that part 4 of the 1961 Act does not apply to urban development corporations. Although the 1980 Act extends to Scotland, section 141(5A) extends only to England and Wales. That is how the mistake was made.

Although leaving clause 34 without amendment would have no practical effect, it would be beneficial to correct it to avoid any potential confusion about the territorial extent of the Bill as it proceeds through Parliament. Making the correction will mean that the extent clause of the Bill will correctly reflect that the substantive measures in the Bill extend only to England and Wales. I hope that is clear; I have done my best to make it so.

Amendment 24 agreed to.

Amendment made: 25, in clause 34, page 26, line 39, leave out subsection (2).—*(Gavin Barwell.)*

See the explanatory statement for amendment 24.

Clause 34, as amended, ordered to stand part of the Bill.

Clause 35

COMMENCEMENT

Gavin Barwell: I beg to move amendment 26, in clause 35, page 27, line 8, after "3", insert

", (Power to direct preparation of joint local development documents)"

The amendment provides for the regulation-making powers conferred by NC4 to come into force on the passing of the Act resulting from the Bill.

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

Government new clause 4—*Power to direct preparation of joint development plan documents—*

(1) The Planning and Compulsory Purchase Act 2004 is amended as follows.

(2) After section 28 insert—

"28A Power to direct preparation of joint development plan documents

(1) The Secretary of State may direct two or more local planning authorities to prepare a joint development plan document.

(2) The Secretary of State may give a direction under this section in relation to a document whether or not it is specified in the local development schemes of the local planning authorities in question as a document which is to be prepared jointly with one or more other local planning authorities.

(3) The Secretary of State may give a direction under this section only if the Secretary of State considers that to do so will facilitate the more effective planning of the development and use of land in the area of one or more of the local planning authorities in question.

(4) A direction under this section may specify—

(a) the area to be covered by the joint development plan document to which the direction relates;

(b) the matters to be covered by that document;

(c) the timetable for preparation of that document.

(5) The Secretary of State must, when giving a direction under this section, notify the local planning authorities to which it applies of the reasons for giving it.

(6) If the Secretary of State gives a direction under this section, the Secretary of State may direct the local planning authorities to which it is given to amend their local development schemes so that they cover the joint development plan document to which it relates.

(7) A joint development plan document is a development plan document which is, or is required to be, prepared jointly by two or more local planning authorities pursuant to a direction under this section.

28B Application of Part to joint development plan documents

(1) This Part applies for the purposes of any step which may be or is required to be taken in relation to a joint development plan document as it applies for the purposes of any step which may be or is required to be taken in relation to a development plan document.

(2) For the purposes of subsection (1) anything which must be done by or in relation to a local planning authority in connection with a development plan document must be done by or in relation to each of the authorities mentioned in section 28A(1) in connection with a joint development plan document .

(3) If the authorities mentioned in section 28A(1) include a London borough council or a Mayoral development corporation, the requirements of this Part in relation to the spatial development strategy also apply.

(4) Those requirements also apply if—

(a) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009 has the function of preparing the spatial development strategy for the combined authority's area, and

(b) the authorities mentioned in section 28A(1) include a local planningauthority whose area is within, or is the same as, the area of the combined authority.

28C Modification or withdrawal of direction under section 28A

(1) The Secretary of State may modify or withdraw a direction under section 28A by notice in writing to the authorities to which it was given.

(2) The Secretary of State must, when modifying or withdrawing a direction under section 28A, notify the local planning authorities to which it was given of the reasons for the modification or withdrawal.

(3) The following provisions of this section apply if—

(a) the Secretary of State withdraws a direction under section 28A, or

(b) the Secretary of State modifies a direction under that section so that it ceases to apply to one or more of the local planning authorities to which it was given.

(4) Any step taken in relation to the joint development plan document to which the direction related is to be treated as a step taken by—

(a) a local planning authority to which the direction applied for the purposes of any corresponding document prepared by them, or

(b) two or more local planning authorities to which the direction applied for the purposes of any corresponding joint development plan document prepared by them.

(5) Any independent examination of a joint development plan document to which the direction related must be suspended.

(6) If before the end of the period prescribed for the purposes of this subsection a local planning authority to which the direction applied request the Secretary of State to do so, the Secretary of State may direct that—

(a) the examination is resumed in relation to—

(i) any corresponding document prepared by a local planning authority to which the direction applied, or

(ii) any corresponding joint development plan document prepared by two or more local planning authorities to which the direction applied, and

(b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination.

(7) The Secretary of State may by regulations make provision as to what is a corresponding document or a corresponding joint development plan document for the purposes of this section."

(3) In section 21 (intervention by Secretary of State) after subsection (11) insert—

"(12) In the case of a joint local development document or a joint development plan document, the Secretary of State may apportion liability for the expenditure on such basis as the Secretary of State thinks just between the local planning authorities who have prepared the document."

(4) In section 27 (Secretary of State's default powers) after subsection (9) insert—

"(10) In the case of a joint local development document or a joint development plan document, the Secretary of State may apportion liability for the expenditure on such basis as the Secretary of State thinks just between the local planning authorities for whom the document has been prepared."

(5) Section 28 (joint local development documents) is amended in accordance with subsections (6) and (7).

(6) In subsection (9) for paragraph (a) substitute—

"(a) the examination is resumed in relation to—

(i) any corresponding document prepared by an authority which were a party to the agreement, or

(ii) any corresponding joint local development document prepared by two or more other authorities which were parties to the agreement;".

(7) In subsection (11) (meaning of "corresponding document") at the end insert "or a corresponding joint local development document for the purposes of this section."

(8) In section 37 (interpretation) after subsection (5B) insert—

"(5C) Joint local development document must be construed in accordance with section 28(10).

(5D) Joint development plan document must be construed in accordance with section 28A(7). "

(9) Schedule A1 (default powers exercisable by Mayor of London, combined authority and county council) is amended in accordance with subsections (10) and (11).

(10) In paragraph 3 (powers exercised by the Mayor of London) after sub-paragraph (3) insert—

"(4) In the case of a joint local development document or a joint development plan document, the Mayor may apportion liability for the expenditure on such basis as the Mayor thinks just between the councils for whom the document has been prepared."

(11) In paragraph 7 (powers exercised by combined authority) after sub-paragraph (3) insert—

"(4) In the case of a joint local development document or a joint development plan document, the combined authority may apportion liability for the expenditure on such basis as the authority considers just between the authorities for whom the document has been prepared."

This new clause enables the Secretary of State to give a direction requiring two or more local planning authorities to prepare a joint development plan document. It also makes provision about the consequences of withdrawal or modification of such a direction.

Amendment (a) to Government new clause 4, in proposed new subsection (12) of section 21 of the Planning and Compulsory Purchase Act 2004, at end insert

"after consulting with the local authorities concerned."

Gavin Barwell: If I may, before I turn to the specific amendment, I would like to make introductory remarks about the amendments that we are debating here, and the next couple, which sit together, to a degree, in policy terms, although we shall debate them separately. This is really about our proposed approach to ensuring that all communities benefit from the certainty and clarity that a local plan can provide. I hope that what I say will provide helpful context.

The planning system is at the heart of the Government's plans to boost housing supply. It is not the only thing that we need to do to build more homes; but certainly, one of the crucial ingredients of the strategy that we shall set out in the White Paper will be to release enough land in the right parts of the country to meet housing need. However, rather than having a top-down system in which central Government decide where the housing goes, the Government passionately believe in a bottom-up system where communities take the decisions. There is one caveat: that councillors should not be able to duck taking the tough decisions. In my view, my role in the system is to ensure that each community in the country takes the necessary decisions to meet housing need. How they do it should be a matter for them.

A second objective, looking at the matter from the viewpoint of those who want to build homes, is that the planning system should give them certainty about where the homes can be built, and where they should not try to build homes. That is why we have a longstanding commitment to a local plan-led system, which identifies what development is needed in an area, and sets out where it should and should not go, and so provides certainty for those who want to invest.

Local planning authorities have had more than a decade to produce a local plan. The majority—more than 70%—have done so. However, not every local authority has made the same progress towards getting a plan in place, and there are some gaps in parts of the country where plans are needed most. We have made clear our expectation that all local planning authorities should have a local plan. We have provided targeted support through the LGA's planning advisory service and the Planning Inspectorate, to assist them in doing so. We have also been clear about the fact that local plans should be kept up to date, to ensure that the policies in them remain relevant. If that is not happening it is right for the Government to take action.

[Gavin Barwell]

We invited a panel of experts to consider how local plan-making could be made more efficient and effective. The local plans expert group recommended a clear statutory requirement for all authorities to produce a plan. We agree that the requirement to have a local plan should not be in doubt. However, as long as authorities have policies to address their strategic housing and other priorities, they should have freedom about the type of plan most appropriate to their area. In fact, the constituency of the hon. Member for Oldham West and Royton is an example of a part of the country where a decision has been taken to work with a strategic plan over a wider area, rather than 10 individual local plans.

Effective planning, which meets the housing, economic and infrastructure needs of the people who live in an area, does not need to be constrained by planning authority boundaries. We want more co-operation and joint planning for authorities to plan strategically with their neighbours, ensuring, together, that they can meet the housing and other needs of their areas. There are opportunities to improve the accessibility of plans to local people. The amendments that we propose will strengthen planning in those areas.

New clause 4 enables the Secretary of State to direct two or more local planning authorities to prepare a joint development plan document—the documents that comprise an authority's local plan—if he considers that that will facilitate the more effective planning of the development and use of land in one or more of those authorities. Where we direct authorities to prepare a joint plan, the local planning authorities will work together to prepare it. They will then each decide whether to adopt the joint plan.

The country's need for housing is not constrained by neighbourhood, district or county boundaries. The system needs to support planning and decision making at the right functional level of geography.

Mrs Theresa Villiers (Chipping Barnet) (Con): I wholeheartedly subscribe to the sentiments that my hon. Friend the Minister expressed at the start of his remarks about local councils and communities making decisions. How is that reconcilable with the position in London, where, although borough councils have important powers in this policy area, they can effectively be overridden by the Greater London Authority? If we were really localist, would we not be pushing decisions on housing down to our borough councils?

Gavin Barwell: Actually, most of the statutory responsibilities in London still sit with the London boroughs, but their plans do have to conform to the strategic policies of the London plan, as my right hon. Friend knows. There is a debate about such matters. An interesting distinction is that the London plan cannot allocate specific sites, in either my right hon. Friend's constituency or any other part of the capital. It can set out some overall strategic policies, but it is then essentially for the borough plan in Barnet, Croydon or wherever else to decide where the development in their area goes, subject to the overall strategic policies.

The Government's view is that the balance is right, and that there is a case for strategic planning across London, but clearly it would be possible to argue otherwise. Indeed, there was a period during which the capital did not have a body to provide strategic planning. There is absolutely a legitimate debate to be had. It might reassure my right hon. Friend to hear that I would be opposed to a situation in which the London plan could allocate particular sites contrary to the wishes of Barnet Council, because that would undermine the kind of localism that she refers to.

We have been clear that local planning authorities should work collaboratively so that strategic priorities, particularly for housing, are properly co-ordinated across local boundaries and clearly reflected in individual local plans. We have already discussed the duty to co-operate, and separately we have set out our commitment to strengthen planning guidance to improve the functioning of that duty. The Government recognise that it is not currently functioning in an ideal way.

Following a call for evidence and discussions with a range of bodies, including planning authorities, the development industry and the community groups, the local plans expert group drew attention to the difficulty that some areas are having with providing for the housing that they require, particularly where housing need is high and land is heavily constrained. Such challenges can be compounded when the timetables for local plans coming forward in neighbouring areas do not align, and the plans are therefore not informed by a common evidence base. We need to ensure that such challenges—they are real challenges—do not become reasons for ducking the tough decisions that need to be made to ensure that we build the housing we need.

A joined-up plan-making process, in which key decisions are taken together, will help local planning authorities to provide their communities with a plan for delivering the housing they need. The idea of joint planning and working collaboratively with neighbours is not new. Local planning authorities can already choose to work together on a joint plan and as part of a joint planning committee. There are many examples of their doing so. Indeed, I recently met representatives of Norwich City Council at the MIPIM exhibition. They told me about the way in which they are working with South Norfolk and Broadland districts to produce a combined plan across the three districts. I have already referred to the example in Greater Manchester, with which the hon. Member for Oldham West and Royton will be familiar.

We will continue to support and encourage local planning authorities to choose the most appropriate approach to plan-making in their area, whether they are working on their own or with others to prepare a joint plan. My first bit of reassurance to the Committee is that I envisage the power we are taking being used sparingly. Where effective planning across boundaries is not happening, we must take action to help local planning authorities to make progress, to provide certainty for communities; otherwise, we risk delaying or even preventing the delivery of housing that is urgently needed.

New clause 4 will enable us to do what I have just described. It amends the Planning and Compulsory Purchase Act 2004 to enable the Secretary of State to direct two or more local planning authorities to prepare a joint plan. The power can be exercised only in situations in which the Secretary of State considers that it will facilitate the more effective planning of the development and use of land in one or more of the authorities. The change will apply existing provisions for the preparation

and examination of development plan documents. It also provides for the consequences of the withdrawal or modification of a direction.

New clause 4 will also amend some existing provisions—sections 21 and 27 of the 2004 Act—to ensure that, should the Secretary of State need to intervene more directly in the preparation of a joint plan, there is a mechanism for recovering any costs incurred from each of the relevant local planning authorities. Costs will be apportioned in such a way as the Secretary of State considers just. If the Mayor of London, a combined authority or a county council prepares a joint plan at the invitation of the Secretary of State, they will be responsible for apportioning liability fairly for any expenditure that they incur. Government amendment 26 will provide for the regulation-making power conferred by new clause 4 to come into force on the passing of the Act.

12.45 pm

Having described how the legislation will work, I want to add a personal note. I have only been doing this job for about three months, but I can tell the Committee that I regularly have to deal with casework about planning applications and am lobbied by Members about them. Those applications nearly always relate to situations in which a local authority does not have an up-to-date plan with a five-year land supply, so the presumption in favour of sustainable development applies and developers pick where the new housing goes. That is not the world that I want to see. I want to see proper up-to-date plans with a five-year land supply in place throughout the country, so that the people we are elected to represent choose, via the elected representatives on their local council, where they want development to go in their area. We need clarity, for those interested in building the homes that we need, about where to make planning applications; we also need clarity about places such as open spaces that are valued highly and should not be subject to planning applications.

I recognise that many Committee members have already expressed their strong localist instincts, and that there will therefore always be a nervousness about the Secretary of State's powers to intervene. However, I argue strongly that it is in the wider public interest to ensure that we have proper plan coverage throughout the country. Our existing powers purely provide for the Secretary of State to intervene and write the plan, which may often mean that the Housing and Planning Minister ends up doing it. I am not particularly keen to do that; if things are not working—if an individual planning authority has proved unable to do it—I would prefer the option of getting people to work together to do it at a local level. I recognise that this is a power to intervene, but there is a strong justification for it and it is a more local alternative than the Government's simply stepping in to write the plan.

Dr Blackman-Woods: I shall address my introductory remarks to the Minister's general points about the importance of local plan-making. I say at the outset that Opposition members of the Committee have noticed and welcomed the difference in tone and the slight change in policy direction that have come with the new Minister. I agree about the importance of having communities at the heart of local plan-making. When planning is done really well and people are involved in planning their neighbourhoods, we are much more likely to get the sort of development that supports our placemaking objectives, and that is supported by local people. Critically, in my experience, the involvement of local communities drives up the quality of what is delivered locally. We totally agree with the Minister that, where possible, local communities should be at the heart of planning and local authorities should work with their neighbourhoods to draw up a local plan.

Nevertheless, like the Minister, we recognise that if a local plan is not in place, local communities and neighbourhoods are at risk of receiving really inappropriate development. To determine applications, a council is likely to rely on saved local policies, if it has them, from a previous plan which might be out of date. What often happens in my experience—this is particularly true recently, with local authorities concerned about the number of applications they reject in case they subsequently get overturned on appeal—is that decisions go through that might not be in the best interests of the local authority or the local community, simply because a local plan is not in place.

I am pleased that the Minister consulted the local plan expert group in thinking about how to bring forward the provisions in new clause 4. The people on that group are very knowledgeable about the planning system. Nevertheless, he did not need to do that. He just needed to pick up his copy of the Lyons report—I know he has one—and turn to page 62. On that page he will find our arguments as to why in certain circumstances it might be necessary for the Secretary of State to intervene in local plan-making when, for whatever reason, local plans are not coming forward from the local authority.

The Minister knows that one of the major reasons for plans' not coming forward or being thrown out by the inspector is that councils are not suitably addressing the duty to co-operate. When we were taking evidence for the Lyons review, a number of councillors said, "The real problem is that we cannot meet housing need in our area because we do not have enough land available. We cannot put a proper five-year land supply in place because we simply do not have the land available."

From memory, two examples that stood out were Stevenage and the city of Oxford. They have substantial housing need and a strong demand for housing, but they do not have enough land within their specific local authority boundary to meet that need. Under the Government's legislation, the duty to co-operate would come into play. Those authorities would sit down and make a decision.

The city of Oxford needed South Oxfordshire to bring forward some land, and Stevenage required its neighbouring authorities to bring forward some land. Alas, the duty to co-operate did not work as the Government had envisaged. The land did not come forward in those neighbouring authorities' plans, and that placed both the city of Oxford and Stevenage in the rather difficult situation of having acute housing need but no means by which to meet that need. There are many other such examples around the country.

We listened to a lot of evidence in the Lyons review. In an ideal world, one would not want to give powers to the Secretary of State to direct authorities to come together and produce a plan, but if they are not doing so, they are putting their communities at risk of not

[Dr Blackman-Woods]

meeting housing need, which is acute in some areas. We therefore decided reluctantly—very much like the Minister—that powers should be given to the Secretary of State in limited circumstances to direct local authorities.

The new clause refers to,

"two or more local planning authorities".

That is one way forward. Another that we thought of would be to look at the area covered by strategic housing market assessments and perhaps make that subject to direction by the Secretary of State, but a few local authorities coming together in the appropriate area is just as good a way forward.

As the Committee will have gathered from what I am saying, the Opposition do not have any particular problems with new clause 4, but I have some specific questions. First, will the Minister clarify who decides exactly what is in the document? Perhaps I misheard him, but I think he said it would be up to local authorities themselves, under the provisions in proposed new section 28A, to decide exactly how they would put the plan together. My reading, though, is that that proposed new section gives powers to the Secretary of State to determine exactly what is in the documents and what they might look like.

Proposed new section 28A(4) says that the Secretary of State can give a direction about:

"(a) the area to be covered by the joint development plan document to which the direction relates;

(b) the matters to be covered by that document;

(c) the timetable for preparation of that document."

I have absolutely no problem with that—it seems to us to be an entirely sensible way forward when local plan-making arrangements have broken down for whatever reason—but it does seem to suggest that it will not be the local councils that will be deciding what the documents cover. In those circumstances, it will be the Secretary of State.

Gavin Barwell: The hon. Lady has read the provisions entirely correctly. We want to make sure that, for example, everywhere in the country there is clarity about site allocations and where people can build. That is why we need that power. The point I was making in my speech was that authorities can choose whether they wish to do their own local plan or to work together, as those in Greater Manchester have done, to produce a spatial development strategy. We shall not specify all the detail, but there are some core things that need to be covered throughout the country.

Dr Blackman-Woods: I thank the Minister for that helpful clarification.

My second point is about proposed new section 28C. Will the Minister direct us to where we can find the set of circumstances that will trigger the Secretary of State's asking local authorities to come together to produce a joint plan? I have given him the example of when the duty to co-operate is not working. I would have thought that should be pretty apparent, because the likelihood would be that a local plan would be thrown out by the planning inspector. I am not sure whether there are other circumstances that the Minister can tell us about. It could be that things are just taking too long, or that something is not being done properly.

I suspect that we will have regulations to support the legislation, which will make it all clear to us at some future date. They will have the specificity on the action or non-action that the Minister has in mind that would trigger the Secretary of State's involvement and such a direction being given to local authorities. It would help our deliberations if the Minister could be a bit clearer about the circumstances in which the Secretary of State will make this direction.

Finally—we will get on to this later, I hope—the Planning Officers Society has helpfully put into the public domain some detail on how the duty to co-operate is failing to meet housing need in this country. The association has very helpfully proposed policies to ensure that everywhere has a local plan in place that are pretty similar to what the Minister has suggested this morning. I did not want to finish my remarks on new clause 4 without acknowledging the work done by the society over several years to highlight, to the Minister and others, the fact that the current system is just not working for everyone, and the fact that something must be done to ensure that each area can have a local plan in place.

1 pm

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

Adjourned till this day at Two o'clock.