

### Welcome to the Age of Muscular Localism

Last week, the chair of the commons communities select committee Clive Betts grilled planning minister Nick Boles and housing minister Mark Prisk. "We started out with localism", Betts said with an air of scepticism. "Then we got moved onto something the Secretary of State called guided localism. And the next stage was muscular localism." Eric Pickles had indeed introduced the world to idea of "muscular localism" at the beginning of September. Nick Boles seemed to thoroughly enjoy informing the committee what this muscularity is set to mean in practice.

Boles took aim at those councils his department deems to be underperforming – the laggards. "We will be finding different ways, and I don't want to reveal all my hand at this stage, to make being a long term laggard painful." (Who are these laggards? See the final page of this eBulletin for my analysis – Hartlepool & Ribble Valley at the very least).

As Boles spoke about wielding sticks and causing pain, housing minister Mark Prisk, who only occasionally managed to get a word in during the hearing, took an altogether softer tone. "I am on the whole a carrots man," he told the committee to laughter. But it was Boles and his sticks that dominated the afternoon. He promised that laggard planning authorities will get intensive help in improving their service, but failed to explain how cash strapped councils could finance improvement – especially as their planning fees are due to be diverted to the planning inspectorate. Eric Pickles has already said that struggling planning authorities should merge with their neighbours, and perhaps this is the hand that Boles is not revealing. Maybe councils will only get their powers back if they merge their planning service with another.

What is clear is that the government wants to treat planning authorities like schools. They will be subject to league tables and 'the laggards' will be put on special measures and bypassed by developers who will take their projects direct to the planning inspectorate. Developers or councils unhappy with the result will only have recourse to judicial review.

Communities and campaigners are set to be squeezed out too. Boles made it clear that the time limit on consultation on applications taken in by the planning inspectorate will be bare statutory minimum of 21 days. Developers will only need to submit information to local authorities or the inspectorate if it is a material consideration. Expect a lot of argument on what that means but it is clear that we are about to enter the age of the skinny planning applications. Communities and councils are set to be told little more than the bare bones of what is about to be built. The only part of the planning system set to survive with any muscle is the power of the Nick Boles and Eric Pickles to control local affairs. Welcome to the age of muscular localism.

**Andy Boddington**

## The Growth and Infrastructure Bill

**Introduction.** The bill published on 18 October is part of the government's plans to boost economic growth through speeding up planning. Two days earlier, planning minister Nick Boles gave an assured performance in front of the commons communities and local government select committee, alongside housing minister Mark Prisk. Unless stated, quotes by Nick Boles in this document refer to his select committee evidence.



Nick Boles addresses the select committee

**Sources.** DCLG statement & notes on bill: . Draft bill: . Select committee video: . Planning: . CPRE

### Summary

**Affordable housing.** Developers will be allowed to repeatedly ask councils to drop a Section 106 agreement for affordable housing. If the council does not budge, they can appeal to the planning inspectorate.

**Infrastructure.** The planning inspectorate's major infrastructure regime will be expanded beyond "pure infrastructure" to commercial and industrial developments, but not to housing.

**Suspension of planning powers.** The timeliness of decisions on major planning applications and the proportion of decisions overturned at appeal will be used to identify failing authorities. Developers will be able to take plans directly to the planning inspectorate in authorities deemed failing.

**Town greens.** Campaigners will be blocked from applying for town green status once the site is identified for development. Owners will be able to file a statement that any use for lawful sports and pastimes has ended.

**Communications.** Broadband street cabinets and poles can be installed without planning permission, except in sites of special scientific interest, until April 2018.

**Housing.** Eric Pickles will extend his call in powers to determine a greater number of "nationally significant" housing schemes himself.

**Extensions.** The government will press ahead with its plans to give permitted rights to larger house, office and shop extensions, rights that may become permanent.

**The Taylor Review.** Liberal Democrat peer Matthew Taylor, author of the Living, Working Countryside report, is leading a rapid review of the 6,000 pages of planning guidance.



## S106: Affordable Housing

**Economic viability.** The Growth and Infrastructure Bill will allow for affordable housing in Section 106 agreements to be reconsidered where they are economically unrealistic. Applicants will be able to request that the local planning authority change or drop the requirement. Developers unhappy with the council's response can appeal to the planning inspectorate. The government says this will: "help unlock some of the 75,000 homes... that are currently stalled due to lack of commercial viability."

**If at first you don't succeed...** On a developer's first application to remove the affordable housing obligation, the local authority must apply a test of viability and "deal with the application [so] that the development becomes economically viable." The authority must decide whether to retain, modify or delete the affordable requirement but there is no leeway to, for example, trade housing for green space. But the second time a developer applies, or any subsequent time, the Bill does not require the local authority to consider economic viability. The council is also allowed to agree a substitute obligation, providing it does not threaten economic viability.

**And of you still haven't won...** Dissatisfied developers can appeal to the Secretary of State if the local authority refuses all or part of the application to reduce the affordable housing commitment. Appeal decisions last for three years, after which the developer has to renegotiate with the local authority on the affordable housing requirement if the development has not been completed.

### Bypassing the Laggards

**The bypass.** The Growth and Infrastructure Bill amends the Town and Country Planning Act to allow developers to take planning applications directly to the planning inspectorate if the local authority has been "designated" by the Secretary of State. The planning inspectorate will decide the planning application and receive the applicant's planning fee. Consultation will be limited to the statutory minimum and there will be no right of appeal.

**Designating laggards.** Nick Boles said that the detailed criteria had not been settled but it will be an "objective measure" involving both the length of time an authority takes to decide planning applications and the proportion of refused applications overturned at appeal. Long running applications subject to Planning Performance Agreements will not be included in the timescale calculation. Boles implied that the criteria will not be subject to consultation and that Eric Pickles will rely on the league table of planning authority performance prepared for the Planning Guarantee . Announced in the government's Plan for Growth in March 2011, the [one year guarantee](#) promised that all applications will be decided within 26-weeks by the planning authority and, if there is an appeal, within 26-weeks by the planning inspectorate.

**The laggards.** Nick Boles said that these powers will effect a "very, very few" councils and would last for a year at most. Earlier he told the Conservative Party Conference: "What we are going to do is put in place something which we hope will be shot across laggards' bows. You cannot go on taking the mickey and if you do, developers will have the option of going to the planning inspectorate direct" . On a provisional analysis Hartlepool (Durham) and Ribbles Valley (Lancs) are caught in the "very, very few" net. For other potential laggard councils, including those in the South East, see the analysis at the end of this eBulletin.

**Laggards end.** The Bill does not specify a time limit on designation. Boles said: "We are going to be working intensively with local authorities to help them get to a point where they can resume their responsibilities as soon as possible. This is not recentralisation. It making people understand that with more power comes more responsibility... There will be no doubt be a few laggards and we will be finding different ways, and I don't want to reveal all my hand at this stage, to make being a long term laggard painful."

**Consultation.** Boles said that councils would still undertake the administrative parts of the planning application process, such as notifying nearby residents as well as carrying out consultations. Applications that are processed by the planning inspectorate will be subject only to the statutory minimum level of consultation (21 days) and there will be no going "overboard on consulting absolutely everyone."

**Appeal.** Boles said that there would be no right of appeal against the inspectorate's decisions. "The whole point is that this is intended to be an extremely temporary measure. Of course, there is always an appeal – you can go to court... You can judicial review it." The Bill says: "The decision of the Secretary of State on an application made to the Secretary of State under this section shall be final." Recent case law has made it clear that judicial reviews cannot challenge the inspector's judgement on the balance of material considerations, only errors in the process, or a significant oversight or misinterpretation.

**Exclusions.** The planning powers of the Homes and Communities Agency, the Mayor of London, mayoral development corporations and urban development corporations cannot be taken over by Eric Pickles.

**Technical note.** A 'major' planning application is not particularly major. It is: any minerals or waste application; 10 or more residential units; residential on a site of 0.5 hectares or more; non-residential on a site of at least 1 hectare; buildings where the floor space to be created by the development is 1,000 square metres or more; and development on a site of 1 hectare or more .

### Infrastructure

**Beyond 'pure' infrastructure.** Eric Pickles announced in September that the nationally significant infrastructure planning process under the Planning Act 2008 would be extended to include business and commercial development "of a significant scale" . Boles gave examples: "big business and science parks, research and development facilities, storage and distribution centres, minerals extraction, major industrial developments like oil refineries, big chemical works and major manufacturing plants".

**Policy and consultation.** Existing categories under the Planning Act are guided by national policy statements. Boles said: "I don't believe that [this] will need national policy statements. I don't believe we need to do that much but there will be a clear set of criteria about which developments will be counted as major infrastructure." Existing requirements for the developer to consult local communities will be kept.

### Town Greens

**Purpose of change.** The communities department said the Growth and Infrastructure Bill: "will help stopping the misuse of town and village green applications that undermine planned development, whilst protecting its use to safeguard cherished community spaces and ensure the protection of genuine town and village greens."

**Ending accumulating rights.** A landowner will be able to deposit with the commons registration authority a statement that brings “to an end any period during which persons have indulged as of right in lawful sports and pastimes on the land to which the statement relates.”

**Rights to register** a town green will be suspended if a planning application is submitted or the land is allocated for development in a draft or adopted local plan or neighbourhood plan (‘trigger events’). The rights will be reinstated if the planning application fails, the plan is not adopted, or is withdrawn (‘terminating events’).

## Communications

**Broadband.** The Bill will allow broadband street cabinets and lines to be installed in any location other than a site of special scientific interest without planning permission. The new rules, which will apply for five years, will not allow “any conditions being placed upon the construction or design by local authorities except in exceptional circumstances.” The Bill suspends until 6 April 2018 the duty of public authorities “to have regard to conserving beauty etc.” of National Parks, the Broads and AONBs when exercising functions in respect of communications infrastructure. Nick Boles told the select committee: “There is no aspect of infrastructure that will have such an economic impact, particularly in rural areas, than a wide roll out of broadband that actually it is right to shift the [permitted development] boundary a little bit.”

## More from the Growth & Infrastructure Bill

**Appeal costs.** The planning inspectorate is to be given independent powers to award costs without being asked. This will allow the inspectorate to “recover all or part” of the government’s costs in appeals “as a further incentive to good behaviour throughout the planning process.” Boles told the select committee that developers have told him that they can be reluctant to ask for costs to be awarded if they have an on-going relationship with the planning authority.

**Information.** Councils will only be able to ask for information from developers on matters that are material planning considerations. Requests “must be reasonable having regard, in particular, to the nature and scale of the proposed development” and made “only if it is reasonable to think that the matter will be a material consideration in the determination of the application.”

**Minerals.** Councils will have local discretion over when they review the planning conditions for mineral sites, rather than following the current 15-year regime.

**Rights of way** and stopping up orders will be determined at the same time as planning permission.

## Housing

**Call ins.** Large housing schemes will not be brought under the major infrastructure regime by the Bill as previously suggested. Nick Boles said: “The Secretary of State is going to look at his call in powers which he currently uses very sparingly in relation to any residential developments and look to be open to calling in applications more often on major residential developments when those developments have such scales as to be more than just local significance. We don’t believe it is going to be necessary to bring such developments into the major infrastructure regime. That would fly in the face of everything we have said, that the local plan with the NPPF behind it should be placed in the driving seat, so the call in procedure is probably the better way to deal with [housing].”

**Housing extensions.** Boles defended the proposal to extended permitted development rights for house, office and retail extensions. “The change in permitted development is certainly not a free-for-all. The limits are very precise... The reason we want to bring it in initially for three years is twofold. One, we have a growth problem... We have an urgent need to support growth... The reason it is three years is because the construction industry is having a miserable time. If at the end of the three years it has, as I suspect, become completely accepted, just like the last lot of permitted exemptions is now completely accepted... We may look at keeping it in place.” Boles said that there will be an eight-week consultation on the extended permitted development rights.

## Reaction

**CPRE** said that “without significant change [the proposals] will lead to lasting damage to the attractiveness of the countryside, less affordable housing and more delays as a result of legal and direct action.” CPRE’s chief Shaun Spiers said: “This Bill is a depressing attack on the protection of the countryside, just months after the damaging and distracting debate on the National Planning Policy Framework. It is also a centralising measure, a serious departure from the government’s welcome commitment to localism” .

**Business.** The CBI said: “These legislative proposals should help to streamline and speed up the planning process, unblocking development and allowing companies to invest, grow and create jobs. With 97% of business highlighting planning as a barrier to investment, it is vital that the government works quickly to pass the Bill and deliver these changes” .

**More reaction.** Shadow communities secretary Hillary Benn tweeted: “Eric Pickles’ extraordinary plan to nationalise planning permission – he will be able to cut out local communities at the stroke of a pen.” The clause allowing direct applications to the government “should be called the ‘You can’t trust local people to take the right decisions’ clause”  . Planning lawyer Angus Walker said the first part of the Bill should be labelled “the death of localism” . Geoffrey Lean said: “Ministers’ power grab will lead to more unwelcome developments imposed on communities” .

## The Taylor Review

**A quick review.** The review of planning guidance has been expected since completion of the NPPF. What was not expected was that the review would be slipped out without publicity and have to report in six weeks – one week for every thousand pages of guidance . The review will recommend immediate deletions and identify guidance for rewriting. Nick Boles said: “If you have 6,000 pages of guidance, its bloody hard to know where to be guided... [The review has] clear aim of reducing guidance by 60-80%... We will end up with clearer more effective guidance that will make people’s behaviour change.”

**Reaction.** CPRE’s Paul Miner said: “We are surprised and disappointed at how the government has chosen to announce and run this review” . Andy Boddington said: “Lord Taylor must be open, inclusive and consultative in his review... Tell everyone, ask everyone” .

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## Identifying the Laggards

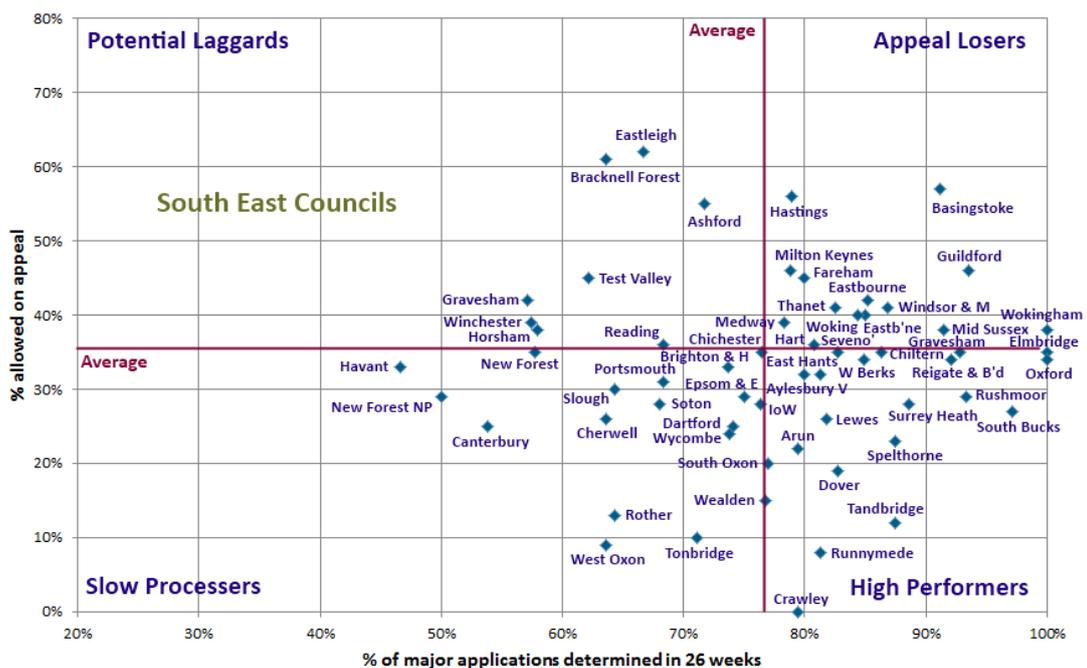
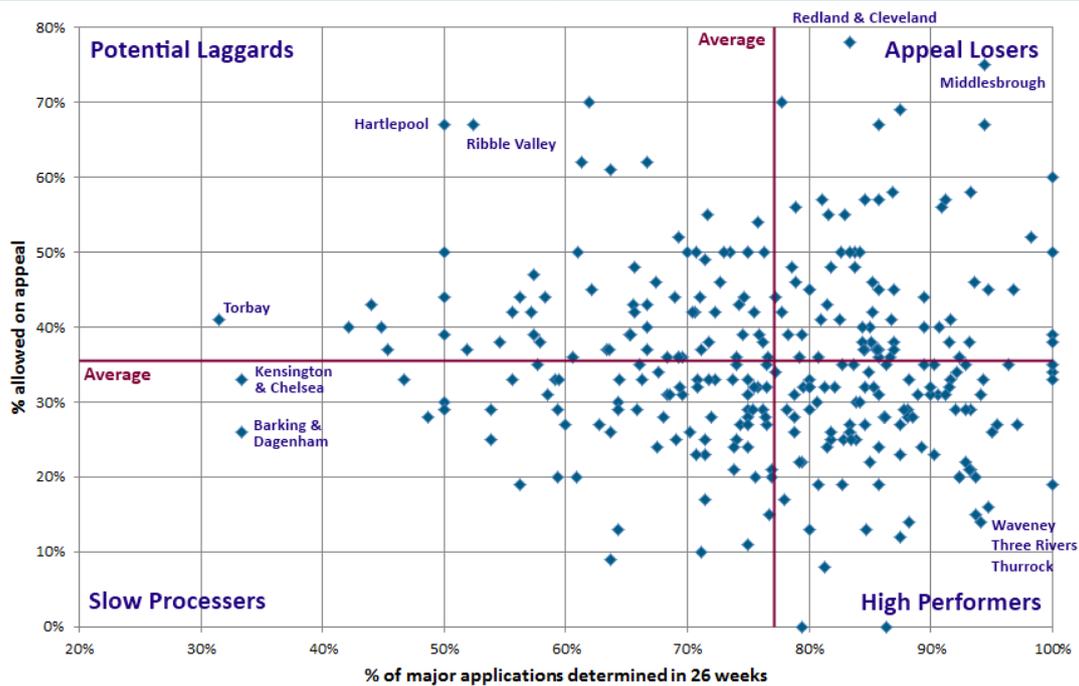
**Uncertainty.** Identification of Nick Boles “very, very few” laggards will depend on the final criteria. The plots show an initial pattern of performance based on 2011-12 data. The classification below has been compiled for this eBulletin and provisional.

**Potential Laggards.** Standing apart from the pack are: **Hartlepool**, Durham: 50% of major applications on time, 67% of appeals lost; and **Ribble Valley**, Lancashire: 52% on time, 67% lost. Other potential laggards: Nottingham City: 62%, 70%; Wyre Forest: 61%, 62%; Bracknell Forest: 64%, 61%; Eastleigh: 67%, 62%.

**Appeal losers.** Councils that top the appeal losers but have a good track record in processing major applications are: **Redcar and Cleveland**: 83% of major applications on time, 78% of appeals lost; **Middlesbrough**: 94% on time, 75% of appeals lost. Runners up: Tameside, Manchester: 78%, 70%; Cheltenham: 88%, 69%; Gedling, Nottingham: 94%, 67%; North York Moors National Park: 86%, 67%.

**Slow processors.** The slowest processors, all with better than average appeal performance, are: **Kensington and Chelsea**: 33% of major applications on time, 33% of appeals lost; **Barking and Dagenham**: 33% on time, 26% lost. Kensington and Chelsea told Planning: “We had a shortage of experienced staff... but have resolved the situation” **P**.

**High performers.** The top three councils in planning performance, those which process applications quickly and lose few appeals are: **Waveney**, Suffolk: 95% major applications on time, 16% appeals lost; **Three Rivers**, Hertfordshire: 94% on time, 14% lost; **Thurrock**, Essex: 94% on time, 14% lost.



**Graph notes.** Data for 2011-12 **PPA**. Planning Performance Agreements excluded from major application processing data. Councils excluded from plots are: those processing five or fewer major planning applications (6 councils); those engaged in five or less appeals (10); those that did not submit planning performance data (25); upper tier authorities (county councils).